

KEN
7944
.55
1920

Cornell University Library
KEN7944.551900

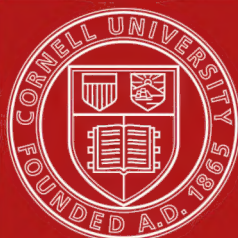
The Judicature Act (Revised statutes, 1



3 1924 016 985 594

law





Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

THE JUDICATURE ACT

(REVISED STATUTES, 1900, CAP. 155)

AND

RULES OF THE SUPREME COURT

OF

NOVA SCOTIA;

CROWN RULES,

AND

WINDING UP RULES.



HALIFAX:
COMMISSIONER OF PUBLIC WORKS AND MINES,
QUEEN'S PRINTER,
1900.

L.A. 7/9/5

JUDICATURE ACT, ETC.

TABLE OF CONTENTS.

	PAGE
THE JUDICATURE ACT	1
RULES OF THE SUPREME COURT—PRELIMINARY	21
ORDER.	
I. Form and commencement of action—Rules 1 and 2	22
II. Writ of Summons and Procedure, &c.—Rules 1 to 6	22
III. Indorsements of Claim—Rules 1 to 7	22
IV. Indorsement of Address—Rules 1 to 3	24
V. Issue of Writ of Summons—Rules 1 to 6	24
VI. Concurrent Writ—Rules 1 and 2	25
VII. Disclosures by Solicitors and Plaintiffs—Rule 1	25
VIII. Renewal of Writ—Rules 1 to 3	26
IX. Service of Writ of Summons.	
1. Mode of Service—Rules 1 and 2	27
2. On particular Defendants—Rules 3 to 8	27
3. In particular Actions—Rule 9	28
4. Generally—Rule 10	28
X. Substituted Service	28
XI. Service out of the Jurisdiction—Rules 1 to 5	28
XII. Appearance—Rules 1 to 7, 10 to 18	30
XIII. Default of appearance—Rules 1 to 12	32
Cases not specially provided for—Rules 13 and 13 A	36
XIV. Leave to sign Judgment, &c.—Rules 1 to 9	37
XV. Application for Account—Rules 1 and 2	39
XVI. Parties.	
1. Generally—Rules 1 to 13	39
3. Persons under disability—Rules 16 to 22	43

ORDER		PAGE
XVI.	Parties.—Continued.	
	4. Proceedings by or against Paupers—Rules 23 to 32.....	44
	5. Administration and execution of trusts— Rules 33 to 48.....	45
	6. Third Party procedure—Rules 49 to 56..	49
XVII.	Change of Parties by Death, &c.—Rules 1 to 10	51
XVIII.	Joinder of Causes of Action—Rules 1 to 9.....	53
XVIII. A.	Trial without Pleadings.....	55
XIX.	Pleading Generally—Rules 1 to 29	56
XX.	Statement of Claim—Rules 1 to 6.....	61
XXI.	Defence and Counter-claim—Rules 1 to 20. . .	63
XXII.	Payment into Court and Tender—Rules 1 to 17.	66
XXIII.	Reply and Subsequent Pleading—Rules 1 to 6..	69
XXIV.	Matters Arising Pending the Action—Rules 1 to 3.....	70
XXV.	Proceedings in lieu of Demurrer—Rules 1 to 5 A	71
XXVI.	Discontinuance—Rules 1 to 4.	72
XXVII.	Default of Pleading—Rules 1 to 14.....	73
XXVIII.	Amendments—Rules 1 to 14.	76
XXIX.	Summons for Directions—Rules 1 to 7.....	78
XXX.	Discovery and Inspection—Rules 1 to 31.....	79
XXXI.	Admissions—Rules 1 to 9.....	86
XXXII.	Issues, Inquiries and Accounts—Rules 1 to 10..	88
XXXIII.	1. Special Case—Rules 1 to 7.....	90
	2. Issues of Fact without Pleadings—Rules 8 to 11.....	91
XXXIV.	Trial.	
	1. Place—Rules 1 and 2.....	92
	1. A. Time of Trial—Rule 1 A.....	93
	2. Mode of Trial—Rules 2 to 9.....	93
	3. Notice and and entry of Trial—Rules 10 to 21 B	95
	4. Proceedings on Trial—Rules 22 to 34... .	97
	5. Assessors and Referees—Rules 35 to 43 C.....	100
	6. Writ of Inquiry, &c., as to Damages— Rules 44 to 48.....	101
XXXV.	Evidence.	
	1. Generally—Rules 1 to 3.....	103
	2. Examination of Witnesses—Rules 3 A to 24	103
	3. Subpœna—Rules 25 to 33	108
	4. Perpetuating Testimony—Rules 34 to 37.	108
	5. Foreign Judgment—Rule 38.....	109

ORDER	PAGE
XXXVI. Affidavits.	
1. Affidavits and Depositions—Rules 1 to 19 A	109
2. Affidavits, &c., in Chambers—Rules 20 to 24	112
3. Trial on Affidavit—Rules 25 to 30	113
XXXVII. Motion for new Trial—Rules 1 to 8	114
XXXVIII. Motion for Judgment—Rules 1 to 12	115
XXXIX. Entry of Judgment—Rules 1 to 11	117
XL. Execution.	
1. Execution—Rules 1 to 42	119
2. Discovery in aid of Execution—Rules 44 to 47	127
XLI. Writs of Execution and Sequestration—Rules 1 to 4	128
XLII. Attachment—Rules 1 and 2	129
XLIII. Attachment of Debts—Rules 1 to 9	129
XLIV. Arrest of Defendant before final Judgment—Rules 1 to 15	131
XLV. Replevin—Rules 1 to 9	134
XLVI. Actions against Absconding Debtors.	
1. Attachments—Rules 1 to 5	137
2. Subsequent Attachments—Rules 6 to 10	138
3. Assessment of Damages—Rules 11 to 13	138
4. Summons to Agent—Rules 14 to 20	139
5. Release of Property—Rule 21	141
6. Security on Execution—Rule 22	141
7. Rehearing—Rule 23	141
8. Forms—Rule 24	141
XLVII. Actions against Foreign Companies—Rules 1 to 7	141
XLVII. A. Actions against Firms, &c.—Rules 1 to 11	143
XLVIII. Writ of Possession—Rules 1 to 4	146
XLIX. Writ of Delivery—Rules 1 and 2	146
L. Interlocutory Orders.	
1. Mandamus, Injunction, &c.—Rules 1 to 12	147
2. Compounding Penal Actions—Rules 13 to 15	149
3. Receivers—Rules 15 A to 22	150
4. Liquidators and Guardians—Rule 23	151
LI. Sales by the Court.	
1. Lunatics and Infants Estates—Rules 1 to 5	152
2. Other Cases—Rules 6 to 9	154
3. Foreclosure Sale—Rule 10 to 12	155

ORDER	PAGE
LII. Motions and other Applications—Rules 1 to 16.	156
LIII. Action of Mandamus Rules 1 to 4.	159
LIV. Applications and proceedings at Chambers— Rules 1 to 10.	159
LIV. A. Declaration on Originating Summons—Rules 1 to 4.	162
LIV. B. Powers of Masters in Chambers —Rules 1 to 3.	163
LIV. C. Proceedings under Trustee Act—Rules 1 to 6.	164
LV. Chambers in Chancery Matters.	
1. General Rule—1.	165
2. Administrations and Trusts—Rules 2 to 11.	166
3. Assistance of Experts—Rule 12.	170
5. Proceedings relating to Infants—Rules 16 and 17.	170
6. Summons to Proceed—Rules 18 to 23.	170
7. Summons Book—Rule 24.	172
8. Attendance—Rule 25.	172
9. Advertisements for Creditors, &c.—Rules 29 to 44.	173
10. Interest—Rules 45 to 47.	176
10. A. References—Rules 47 A to 47 M.	177
11. Further Consideration—Rule 48.	179
12. Forms—Rule 49.	179
LVI. Interpleader—Rules 1 to 17.	179
LVII. Appeals, &c.—Rules 1 to 17.	183
LVIII. Sessions, Vacations, Arguments, &c—Rules 1 to 24.	187
LIX. Officers and their Documents—Rules 1 to 17.	192
LX. Time—Rules 1 to 9.	194
* * * * * *	
LXIII. Costs—Rules 1 to 22.	195
Special Allowances, &c.—Rule 23.	200
LXIV. Notices, &c.—Rules 1 and 2.	205
LXV. Services of Orders, &c.—Rules 1 to 8.	205
LXVI. Non-application to Criminal Business, &c.— Rules 1 and 2.	206
* * * * * *	
LXVIII. Non-compliance—Rules 1 to 4.	207
LXIX. Interpretation—Rules 1 and 2.	207
LXX. General Rules—Rules 1 to 3.	208

APPENDIX A.

CROWN RULES—	PAGE
Custody of Records.....	1
Date of Proceedings.....	1
Affidavits.....	1-4
<i>Certiorari</i>	4-7
Informations, Indictments, &c....	7-8
Quo Warranto.....	9-10
Mandamus.....	10-12
Prohibition.....	12-13
Appearance to Indictment, Information and Inquisition..	13-14
Bail.....	15
Recognizance.....	15-16
<i>Scire Facias</i>	16
Pleadings.....	16-17
Copies of Proceedings and Service.....	17-18
Special Cases and Demurrers.....	18
Paper Books.....	18
Notice of Trial.....	18-19
Continuances.....	19
New Trial.....	19-20
Judgment by Default.....	20
Judgment.....	20-22
Appeals.....	22
Execution.....	22-24
Writs.....	24-25
<i>Habeas Corpus</i>	25-26
Motions.....	26-27
Attachment for Contempt.....	27-29
Time.....	29-30
Amendment.....	30
Costs.....	30
Notices.....	30
Non-compliance.....	31
Interpretation.....	31
Forms.....	31
Returns by Sheriffs and Clerks of the Crown.....	31-32
When to come in force.....	32
Forms.....	33-56

APPENDIX "B."

Winding-up Rules.....	69-74
-----------------------	-------

REVISED STATUTES, 1900.

CHAPTER 155.

OF THE SUPREME COURT AND PROCEDURE THEREIN.

THE JUDICATURE ACT.

1. This Chapter may be cited as “The Judicature Short title Act.” R. S., c. 104, s. 1.

INTERPRETATION.

2. In this Chapter, and in the Rules of the Supreme Court, unless the context otherwise requires, the following expressions shall have or include the meanings in this section mentioned, that is to say: Interpretation of terms.

(1.) “Rules” includes “Rules of Court,” and both include Forms.

(2.) “Cause” includes any action, suit, or other original proceeding between a plaintiff and a defendant.

(3.) “Suit” includes action.

(4.) “Action” means a civil proceeding commenced by writ, or in such other manner as is prescribed by Rules of Court; but does not include a criminal proceeding by the Crown.

(5.) “Plaintiff” includes every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same is taken by action, suit, petition, motion, summons, or otherwise.

(6.) “Petitioner” includes every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

(7.) “Defendant” includes every person served with any writ of summons or process, or served with notice of, or entitled to attend, any proceedings.

(8.) “Party” includes every person served with notice of, or attending, any proceeding, although not named on the record; and includes a body corporate or politic,

R.S., c. 155. (9.) "Matter" includes every proceeding in the Court, not in a cause.

(10.) "Pleading" includes every petition or summons, and also includes the statement in writing of the claim or demand of any plaintiff, and of the defence or the counterclaim of any defendant thereto, and of the reply of the plaintiff to any defence or counterclaim of a defendant, and of the defendant's reply to such reply.

(11.) "Judgment" includes decree.

(12.) "Order" includes rule.

(13.) "Oath" includes solemn affirmation and statutory declaration.

(14.) "Existing" means existing at the time of this Chapter coming into force.

(15.) "This Chapter" means the portion of this Chapter exclusive of the rules. R. S., c. 104, s. 47.

CONSTITUTION OF THE SUPREME COURT.

Constitution of
Supreme Court

3. The Supreme Court of Nova Scotia as constituted before this Chapter, a Court of common law and equity, and possessing original and appellate jurisdiction in civil and in criminal cases, shall continue under the aforesaid name to constitute one Supreme Court of Judicature for Nova Scotia. R. S., c. 104, s. 2 part.

SEAL.

Seal.

4. The Governor-in-Council may from time to time determine and declare the seal to be used in the Supreme Court, and by which its proceedings shall be certified and authenticated; and until another seal for the Supreme Court is established, the existing seal in use in the Supreme Court may be used therefor. R. S., c. 104, s. 7.

JUDGES.

Bench of
Supreme Court

5. The Bench of the Supreme Court shall be composed of a Chief Justice and six other Judges, including the Judge in Equity. R. S., c. 104, s. 2 part.

Judges, quali-
fication of.

6. No person shall be appointed a Judge of the Supreme Court unless he has been a resident barrister of the Province for ten years, and has been practising as such for five years before such appointment, or has held office as a county court judge in the Province. R. S., c. 104, s. 2 part.

Judges, holding
office.

7. The Judges of the Supreme Court shall hold no other offices under Government, except those of the local Judge in Admiralty of the Exchequer Court and the

Judge Ordinary of the Court for Divorce and Matrimonial Causes. R. S., c. 104, s. 2 part. R.S., c. 155.

8. The persons hereafter appointed to fill the places of the Chief Justice, Judge in Equity and other Judges of the Supreme Court, and their successors respectively, are to be appointed by the authority mentioned in the British North America Act, and with the same title as heretofore. R. S., c. 104, s. 2 part. Judges, appointment of.

9. Save as in this Chapter is otherwise expressly provided, all the Judges of the Supreme Court mentioned, and their successors, shall have in all respects equal power, authority and jurisdiction. R. S., c. 104, s. 2 part. Judges to have equal powers.

10. The Chief Justice for the time being of the Supreme Court shall be entitled to precedence over all the other Judges thereof. R. S., c. 104, s. 2 part. Chief Justice, precedence of.

11. The Judges of the Supreme Court and their respective successors in office shall be entitled to have, and shall have, precedence next after the Chief Justice, according to seniority of appointment. R. S., c. 104, s. 2 part. Judges, precedence of.

OATH OF JUSTICES.

12. The oath to be taken by the Judges to be hereafter appointed shall be the following:—"I do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and knowledge, execute the powers and trusts reposed in me as ———. So help me God." R. S., c. 104, s. 3. Judges, oath of office.

13. The oath shall be administered to the Chief Justice and the other Judges by the Lieutenant-Governor, or such person as is appointed by him to administer the same; or by any person who is appointed by the Governor-General to administer oaths of office. R. S., c. 104, s. 4. Judges, oath by whom administered.

JURISDICTION OF THE SUPREME COURT.

14. (1.) The Supreme Court of Nova Scotia shall continue to be a court of record, and, subject to the provisions of this Chapter, shall continue to have and exercise the jurisdiction which at the time of the coming into force of this Chapter, was vested in, or capable of being exercised by such Court. Supreme Court, jurisdiction of.

(2.) The Supreme Court shall also have jurisdiction in actions to recover a debt or liquidated demand in money which is under eighty dollars and not less than Jurisdiction in actions under eighty dollars.

R.S., c. 155. twenty dollars, and may try and dispose of the same as other actions. R. S., c. 104, s. 8 part; 1900, c. 15, s. 1, part.

Powers of
Supreme Court.

15. The Supreme Court shall have within this Province the same powers as were formerly exercised by Her Majesty's Courts of Queen's Bench, Common Pleas, Exchequer and Chancery, in England; and also such and the same powers as were on the first day of October, A. D. 1884, exercised in England by Her Majesty's Court of Appeal and by Her Majesty's High Court of Justice, excepting those which were exercised solely by the Probate, Divorce, and Admiralty Division in respect to causes and matters within its exclusive cognizance, and excepting those powers which were specially conferred by statutes relating to bankruptcy. R. S., c. 104, s. 8, part.

Jurisdiction to
include former
jurisdiction of
Court and
Judge.

16. The jurisdiction of the Supreme Court shall include (subject to the exceptions hereinafter contained) the jurisdiction which, immediately preceding the coming into force of this Chapter, was vested in or capable of being exercised by all or any one or more of the Judges of the said Supreme Court of Nova Scotia, sitting in Court or Chambers, or elsewhere, when acting as Judges in pursuance of any statute or law, and all powers given to any such Court, or to any such Judges, by any statute or law, and also all ministerial powers, duties and authorities incident to any and every part of the jurisdiction aforesaid, as well civil as criminal. R. S., c. 104, s. 8, part.

Rules as to
exercising
jurisdiction.

17. The jurisdiction of the Supreme Court shall be exercised in the manner provided in this Chapter, or by Rules of the Supreme Court; and where no special provisions are contained in this Chapter or in any such Rules of Court with reference thereto, it shall be exercised, as nearly as may be, in the same manner as the same might have been exercised prior to the first day of October, A. D. 1884. R. S., c. 104, s. 11.

RULES OF LAW.

Law and equity
to be concur-
rently adminis-
tered.

18. In every civil cause or matter commenced in the Supreme Court, law and equity shall be administered therein, according to the Rules following:—

Equitable estate
or rights claimed
by plaintiff.

(1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title, or claim whatsoever, asserted by any defendant or respondent in such cause or

matter, or to any relief founded upon a legal right which R.S., c. 155. heretofore could only have been given by a Court of Equity, the Supreme Court and every Judge thereof shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of the Equity Judge or the High Court of Chancery in England when the same existed, in a suit or proceedings for the same or the like purpose properly instituted before the first day of October, A.D. 1884.

(2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument or contract, or against any right, title or claim, asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Supreme Court and every Judge thereof shall give to every equitable estate, right or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect by way of defence against the claim of such plaintiff or petitioner as the Court of the Equity Judge or said Court of Chancery ought to have given, if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in either of these Courts, for the same or the like purpose, before the first day of October, A.D. 1884.

Equitable estate
or rights claimed
by defendant.

(3.) The Supreme Court and every Judge thereof shall also have power to grant to any defendant in respect to any equitable estate or right, or other matter of equity, and also in respect to any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant has properly claimed by his pleading, and as the said Court or any Judge thereof might grant in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who has been duly served with notice in writing of such claim, pursuant to any rule of Court or any order of the Court, as might properly be granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect to his defence

Counter-claim
and third
parties.

R.S., c. 155. against such claim as if he had been duly sued in the ordinary way by such defendant.

Equitable rights appearing incidentally.

(4.) The Supreme Court and every Judge thereof shall recognize and take notice of all equitable estates, titles and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of the Equity Judge, or the said Court of Chancery, would have recognized, and taken notice of the same, in any suit or proceeding duly instituted therein before the first day of October, A.D. 1884.

Prohibition, injunction, defence, or stay instead of.

(5.) No cause or proceeding at any time pending in the Supreme Court shall be restrained by prohibition or injunction, but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained prior to the first day of October, A.D. 1884, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto. Provided always that nothing in this Chapter contained shall disable the Supreme Court or any Judge thereof from directing a stay of proceedings in any cause or matter pending before said Court or Judge if it or he thinks fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, prior to the first day of October, A.D. 1884, to apply to the Court or a Judge to restrain the prosecution thereof, or who is entitled to enforce by attachment or otherwise any judgment, decree, rule or order, contrary to which all or any part of the proceedings in such cause or matter have been taken, may apply to the Supreme Court or any Judge thereof by motion in a summary way for a stay of proceedings in such cause or matter, either generally, or so far as is necessary for the purposes of justice; and the Court or Judge shall thereupon make such order as shall be just.

Legal, constitutional and statutory rights to be recognized.

(6.) Subject to the aforesaid provisions for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Chapter, the Supreme Court and every Judge thereof shall recognize and give effect to all legal claims and demands, and all estates, rights, duties, obligations and liabilities existing by the common law or created by any statute, in the same manner as the same would have been recognized and given effect to prior to the first day of October, A.D. 1884, by the Supreme Court either at law or in equity.

(7.) The Supreme Court in the exercise of the jurisdiction vested in it in every cause or matter pending before it, shall have power to grant, and shall grant either absolutely or on such reasonable terms and conditions as to such court seems just, all such remedies whatsoever as any of the parties thereto appear to be entitled to in respect to any and every legal or equitable claim properly brought forward by them respectively in such cause or matter, so that as far as possible all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided. R. S., c. 104, s. 12.

R.S. c. 155.
Final determination of all matters in controversy.

19. (1.) No claim of a *cestui que trust* against his trustee, for any property held on any express trust, or in respect of any breach of such trust, shall be held to be barred by any statute of limitation.

Statute of limitations inapplicable to express trusts.

(2.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such estate.

Equitable waste.

(3.) There shall not be any merger by operation of law only of any estate the beneficial interest in which would not prior to the first day of October, A.D. 1884, have been deemed merged or extinguished in equity.

Merger.

(4.) A mortgagor entitled for the time being to the possession or the receipt of the rents and profits of any land, as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof has been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent injury or recover damages in respect to any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person, and in that case he may sue jointly with such other person.

Suits for possession of land by mortgagor.

(5.) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be and be deemed to have been effectual in law (subject to all equities which would have

Assignment of debts and choses in action.

R.S., c. 155. been entitled to priority over the right of the assignee if this sub-section had not been enacted), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same and the power to give a good discharge for the same, without the concurrence of the assignor.

Disputed assignments of debts and choses in action, conflicting claimants to interplead.

(6.) In case of an assignment of a debt or other chose in action, if the debtor, trustee, or other person liable in respect to such debt or chose in action, has had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he may if he thinks fit call upon the several persons making claim thereto to interplead concerning the same, or he may if he thinks fit pay the same into the Supreme Court, upon obtaining a Judge's order therefor, to abide the determination of the Supreme Court in respect thereto.

Sureties to have assignment of debt and remedies upon payment.

(7.) Every person who, being surety for the debt or duty of another, or being liable with another for any debt or duty, pays such debt or performs such duty, shall be entitled to have assigned to him or to a trustee for him, every judgment, specialty, or other security which is held by the creditor in respect to such debt or duty, whether such judgment, specialty, or other security, is or is not deemed at law to be satisfied by the payment of the debt or performance of the duty; and such person shall be entitled to stand in the place of the creditor, and to use all the remedies, and, if need be, and upon a proper indemnity, to use the name, of the creditor in any action or other proceeding in order to obtain from the principal debtor, or any co-surety, co-contractor, or co-debtor, as the case may be, indemnification for the advances made and the loss sustained by the person who has so paid such debt or performed such duty; and such payment or performance so made by such surety shall not be a defence to such action or other proceeding by him: Provided always, that no co-surety, co-contractor, or co-debtor shall be entitled to recover from any other co-surety, co-contractor, or co-debtor, by the means aforesaid, more than the just proportion to which, as between those parties themselves, such last mentioned person is justly liable.

Stipulations not of the essence of the contract.

(8.) Stipulations in contracts, as to time or otherwise, which would not before the first day of October, A.D. 1884, have been deemed to be, or to have become, of the essence of such contracts in a Court of Equity, shall

receive in the Supreme Court the same construction and effect as they would previously thereto have received in equity. R.S., c. 155.

(9.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court thinks just; and if an injunction is asked, either before or at or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court thinks fit, whether the person against whom such injunction is sought is, or, is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained, under any color of title; and whether the estates claimed by both or by either of the parties are legal or equitable. Mandamus, injunctions, and receivers.

(10.) In questions relating to the custody and education of infants, the rules of equity shall prevail. Custody of infants.

(11.) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of equity and the rules of the common law, with reference to the same matter, the rules of equity shall prevail. R. S., c. 104, s. 13. Os. 61-62, P. A. 370. Conflict between law and equity.

SITTINGS AND DISTRIBUTION OF BUSINESS.

20. The legal year shall not be divided into terms so far as relates to the administration of justice; and there shall not be terms applicable to any sitting or business of the Supreme Court, but in all cases in which, under the law existing prior to the first day of October, A.D. 1884, the terms into which the legal year was divided were used as a measure for determining the time at or within which any act was required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. R. S., c. 104, s. 14. Abolition of terms.

21. Subject to rules of court, the Supreme Court and the Judges thereof, shall have power to sit and act at any time and at any place, for the transaction of any part of the business of such Court or of such judge, or for the discharge of any duty which, by any statute or otherwise, is required to be discharged. R. S., c. 104, s. 15. Court may sit at any time.

R.S., c. 155.

Distribution of
business.

22. All causes and matters in the Supreme Court shall be distributed among the several judges thereof in such manner as is from time to time determined by any rules of court, or orders of transfer, to be made under the authority of this Chapter. Every document by which any cause or matter is commenced in the Supreme Court shall be marked with the name of the said court. It shall not be necessary in order to confer jurisdiction on any Judge that any rule of court or order of transfer be made. R. S., c. 104, s. 16, part.

Interlocutory
and other steps
dealt with by
rules.

23. All interlocutory and other steps and proceedings in or before the Supreme Court, in any cause or matter subsequent to the commencement thereof, shall be dealt with and disposed of under and by virtue of the Rules of Court in that behalf. R. S., c. 104, s. 16, part.

Trial of election
petitions.

24. A Judge for the trial of an election petition under the provisions of "The Nova Scotia Controverted Elections Act," shall be selected by the judges of the Supreme Court in such manner as is provided by any rules of court to be made for that purpose, subject to the approval of the Governor-in-Council. R. S., c. 104, s. 17.

Business as far
as practicable to
be disposed of
by a single
judge.

25. (1.) Every action and proceeding in the Supreme Court, and all business arising out of the same, except as hereinafter provided, shall so far as is practicable and convenient, be heard, determined and disposed of before a single Judge.

Judge to decide
but may reserve
a case.

(2.) A judge sitting elsewhere than in the Supreme Court *in banco* shall decide all questions coming properly before him, but may reserve any case, or any point in any case, for the consideration of the Supreme Court *in banco*.

Judge to con-
stitute a court.

(3.) In all such cases any Judge sitting in Court shall be deemed to constitute a court. R. S., c. 104, s. 18.

SITTINGS AT HALIFAX.

Civil sittings at
Halifax.

26. (1.) There shall be two regular sittings of the Court in Halifax, in each year, for the trial of civil causes, one to commence on the third Tuesday of April, and the other to commence on the fourth Tuesday of October.

(2.) Each of such sittings shall, unless all the causes for trial are sooner disposed of, continue for four weeks.

(3.) During such sittings trials may be proceeded with simultaneously in the several court rooms, and the docket may be divided, or the causes called, in such way

as the Court directs, but so as to ensure, as far as possible, each cause being tried according to its seniority. R.S., c. 155.

(4.) No more than ten causes shall be called for trial in one court room in one day. R. S., c. 104, O. 58, r. 8 part, r. 10 part, S. C. R., Oct. 30, 1893, r. 4.

27. There shall be two sittings of the Court for the disposal of criminal cases, one on the third Tuesday of March, and the other on the first Tuesday of October, in each year, to be continued until all the business is disposed of. Such sittings shall be attended by the Grand Jury, and all other persons whose duty it is to attend the sittings of the Court in connection with the criminal business. R. S., c. 104, O. 58, r. 11. Criminal sittings at Halifax.

SPRING AND AUTUMN CIRCUITS.

28. There shall be as heretofore five circuits in the Province: The Midland, the Southern, the Western, the Eastern, and the Cape Breton Circuit. Spring and autumn circuits, division of.

The Midland Circuit shall include the Counties of Hants, Colchester, and Cumberland.

The Southern Circuit shall include the Counties of Lunenburg, Queens, Shelburne, and Yarmouth.

The Western Circuit shall include the Counties of Digby, Annapolis, and Kings.

The Eastern Circuit shall include the Counties of Pictou, Antigonish, and Guysborough.

The Cape Breton Circuit shall include the Counties of Richmond, Inverness, Victoria, and Cape Breton. R. S., c. 104, s. 21, 1890, c. 12, s. 1.

29. The Supreme Court shall sit in the several counties twice a year for the trial of causes and issues, whether they are legal or equitable, and whether they are to be heard and determined with or without a jury, as follows, that is to say:— Spring and autumn circuits, time and place of.

MIDLAND CIRCUIT.

HANTS.

At Windsor—On the last Tuesday of May, and on the Tuesday before the last Tuesday of September.

COLCHESTER.

At Truro—On the first Tuesday of June, and on the first Tuesday of October.

CUMBERLAND.

At Amherst—On the third Tuesday of June, and the second Tuesday of October.

LUNENBURG.

At Lunenburg—On the last Tuesday of May.

At Bridgewater—On the second Tuesday of October.

QUEENS.

At Liverpool—On the second Tuesday of June, and on the first Tuesday of October.

SHELBURNE.

At Barrington—On the third Tuesday of June.

At Shelburne—On the last Tuesday of September.

YARMOUTH.

At Yarmouth—On the fourth Tuesday of June.

At Tusket Village—On the Tuesday before the last Tuesday of September.

WESTERN CIRCUIT.

DIGBY.

At Digby—On the second Tuesday of June.

At Clare—On the last Tuesday of September.

ANNAPOLIS.

At Bridgetown—On the third Tuesday of June.

At Annapolis—On the first Tuesday of October.

KINGS.

At Kentville—On the first Tuesday of June, and on the second Tuesday of October.

EASTERN CIRCUIT.

GUYSBOROUGH.

At Guysborough—On the last Tuesday of May, and the first Tuesday of October.

ANTIGONISH.

At Antigonish—On the first Tuesday of June, and second Tuesday of October.

PICTOU.

At Pictou—On the second Tuesday of June, and the third Tuesday of October.

CAPE BRETON CIRCUIT.

R.S., c. 155.

RICHMOND.

At Arichat—On the first Tuesday of June, and the last Tuesday of September.

INVERNESS.

At Port Hood—On the second Tuesday of June, and the first Tuesday of October.

VICTORIA.

At Baddeck—On the third Tuesday of June, and the second Tuesday of October.

CAPE BRETON.

At Sydney—On the fourth Tuesday of June, and the third Tuesday of October. R. S., c. 104, s. 22. 1890, c. 12, s. 2. 1893, c. 115. 1895, c. 26. 1896, c. 24. 1897, c. 34.

30. (1.) Each sittings of the Supreme Court in the next preceding section mentioned shall, unless the docket of causes for trial is sooner disposed of, continue, Length of sitting in each of such circuits.

(a.) until the Saturday before the day thereby appointed for opening the sittings at the next place on the same circuit, and

(b.) if the sittings is held at the last place on the circuit, until the second Saturday after the first day of such sittings.

(2.) Provided that if the docket of causes for trial at the sittings at Sydney has not been disposed of within such period, the sittings at such place shall, unless the docket of causes for trial is sooner disposed of, continue for three weeks, and the jury in attendance at such sittings at such place shall remain in attendance from day to day for the trial of any jury causes, unless a new jury is summoned. R. S., c. 104, s. 23. 1899, c. 40.

MIDSUMMER CIRCUITS.

31. Where the docket of causes for trial at any spring sittings has not been disposed of, there shall be a midsummer sittings of the Court for the trial of causes remaining on such docket, to be held as follows, that is to say :— Midsummer circuits, time and place of.

MIDLAND CIRCUIT.

At Windsor, on the third Tuesday of July; *at Truro*, on the third Tuesday of August.

R.S., c. 155.

SOUTHERN CIRCUIT.

At Shelburne, on the fourth Tuesday of July; *at Liverpool*, on the third Tuesday of August; *at Lunenburg*, on the second Tuesday of September.

WESTERN CIRCUIT.

At Digby, on the third Tuesday of July; *at Kentville*, on the third Tuesday of August.

EASTERN CIRCUIT.

At Antigonish, on the third Tuesday of July; *at Guysborough*, on the third Tuesday of August.

CAPE BRETON CIRCUIT.

At Port Hood, on the third Tuesday of July; *at Baddeck*, on the second Tuesday of August; *at Sydney*, on the third Tuesday of August. R.S., c. 104, s. 24 part, and 25 part.

Midsummer circuits, to be held by judge of the spring circuit.

32. The midsummer sittings at each place shall be held by the judge who presided at the spring sittings upon that circuit, except in case of his illness or other cause, when another judge may hold such sittings. R.S., c. 104, s. 24 part.

Midsummer circuits, no notice of that necessary

33. It shall not be necessary to give notice of trial or to enter causes upon a docket for any such midsummer sittings, but the docket of the spring sittings shall be used. R.S., c. 104, s. 25 part.

Length of sitting midsummer.

34. Each of the midsummer sittings of the court at any place shall, unless the causes for trial are sooner disposed of, continue,

(a.) until the day but one before the day appointed for the opening of the sittings at the next place on the same circuit, and

(b.) if the sittings is held at the last place on the circuit, then for the period of four weeks. R.S., c. 104, s. 26.

SPECIAL SITTINGS.

Special sitting, by order of court or judge.

35. (1.) Whenever it appears necessary for the disposal of actions at issue in any county, the court or a judge may either by consent of parties or otherwise, order a special sittings of the court to be held at any time in such county for the trial and disposal of such actions.

(2.) The judge presiding at such sittings may dispose of motions and all other business which may be disposed of by a judge sitting in court or in chambers. R.S., c. 155

(3.) The court or a judge may order a special docket to be prepared for any such sittings. 1890, c. 10, s. 1.

CONDUCT OF SITTINGS.

36. (1.) If no Judge of the Supreme Court can attend a sittings of the Supreme Court for the trial of causes, with or without a jury, or a part of such sittings, a Judge of any County Court may if requested by the judge assigned to hold such sittings, or by the judges, preside at such sittings or at such part thereof. Judge of County Court may be requested to go on circuit.

(2.) The court so presided over by such judge of a County Court shall have the same power, authority and jurisdiction, civil and criminal, as if presided over by a judge of the Supreme Court.

(3.) Such judge of the County Court while so presiding and with respect to the causes tried before him, shall possess, exercise and enjoy all the powers, authorities, duties and privileges of a Judge of the Supreme Court.

(4.) No judge of any County Court shall preside at any sittings of the Supreme Court within the district for which he is judge of the County Court. 1897, c. 31, s. 1.

37. If the business which formerly was transacted on the Equity side of the Supreme Court is transferred to any one of the judges, he shall not be required to attend the circuits, unless the illness of a judge, or other sufficient cause, renders it necessary for him to do so. Judge in equity exempted from going circuit on transfer of equity business. R. S., c. 104, O. 58, r. 24.

38. The presiding judge may, from time to time, in his discretion, extend and adjourn any sittings for such time as he deems necessary for the disposal of the causes on the docket. Judge may extend sittings. R. S., c. 104, O. 58, r. 25.

39. If a judge is prevented from arriving at the place appointed for holding a sittings, on the day fixed for holding the same, the sheriff shall give public notice that the court will sit on the day following, and shall give such notice from day to day for three successive days, unless a judge in the meantime arrives. Adjournment of court by Sheriff in absence of Judge. R. S., c. 104, O. 58, r. 20.

40. Separate lists shall be made of the jury and non-jury trials for each sittings, and the jury trials shall be Separate list of jury and non-jury actions.

R.S., c. 155 first disposed of, unless the judge for any special reason, directs otherwise. R. S., c. 104, s. 27.

TRIAL AND PROCEDURE.

Party to prove facts sufficient in point of law.

41. At the trial of any action no party shall be entitled to judgment on the ground of his pleading being true, if the facts proved are not sufficient in point of law to entitle him to judgment. R. S., c. 104, s. 19.

Mode of trial with or without a jury.

42. Subject to rules of court, the trials and procedure in all causes, whether of a legal or equitable nature, shall be as nearly as possible the same, and the following provisions shall apply :—

Actions tried with a jury, jury notice and order for jury.

(1.) In civil actions, unless the parties in person or by their counsel or solicitors consent to a trial of the issues of fact or the assessment or inquiry of damages without a jury, the issues of fact shall be tried and the damages assessed or inquired of by a judge with a jury in the following cases, that is to say—

(a.) Where the action is an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment.

(b.) Where either of the parties in an action other than an equitable action requires the issues of fact to be tried, or the damages to be assessed or inquired of with a jury and files with the prothonotary and leaves with the other party or his solicitor a notice to that effect at least twenty days before the first day of the sittings at which the issues are to be tried or the damages assessed or inquired of: Provided that upon an application to the court or to a judge made before the trial or by the direction of the judge at the trial, such issues may be tried or such damages assessed or inquired of by a judge without a jury, notwithstanding such notice.

(c.) Where the judge at the trial in his discretion directs that the issues of fact shall be tried or the damages assessed or inquired of with a jury.

*Actions held without a jury.

(2.) In all other cases the issues of fact or the assessment or inquiry of damages in civil actions shall be tried, heard and determined and judgment given by a judge without a jury.

(3.) If in any action both legal and equitable issues R.S., c. 155 are raised, they shall be heard and determined at the same time, unless the Court or a judge, or the judge at the trial, otherwise directs, or unless under the foregoing provisions of this section either of the parties requires that the legal issues of fact be tried with a jury. Legal and equitable issues when tried together.

(4.) Upon the trial of any action the presiding judge may, of his own motion, or by consent of parties, reserve judgment until a future day, not later than sixty days from the day of reserving judgment, and his judgment whenever given shall be considered as if given at the time of the trial. Such judgment shall be filed with the prothonotary of the Court for the county in which the action was tried, who shall immediately give notice in writing to the parties to the cause or their respective solicitors that such judgment has been filed, and each of the parties shall have and exercise, within twenty days from the service of such notice, all such rights as he possessed or might have exercised if judgment had been given on the trial of the action. Reserving judgment for sixty days, by judge at trial. Filing such judgment, notice of such judgment by Prothonotary to parties

(5.) Upon any trial with a jury of any action except an action for libel, the jury shall, if so directed by the judge, give a special verdict, and if not so directed may give either a general or a special verdict. Special verdict, when directed.

(6.) (a.) Upon a trial with a jury of any action except an action for libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution or false imprisonment, the judge instead of directing the jury to give either a general or a special verdict may direct the jury to answer any questions of fact raised by the issues. Jury to answer questions when directed.

(b.) Such questions may be stated to them by the judge, and counsel may require the judge to direct the jury to answer any other question raised by the issues or necessary to be answered by the jury in order to obtain a complete determination of all matters involved in the action. Questions to jury by Judge and counsel

(c.) The jury shall answer such questions, and shall not give any verdict, and the judge shall give a judgment in the action not inconsistent with the answers of the jury to such questions. Judgment on answers of jury.

R.S., c. 155.

Refusal to submit questions,
new trial for.

(d.) If the judge refuses to direct the jury to answer any question which counsel requires him to submit to them, such refusal may be used as a ground for a new trial. R. S., c. 104, s. 20; 1889, c. 6, s. 1.

Assessors ordered by Judge.

43.—(1.) Subject to any rules of court, the Court or judge may in any cause or matter in which it is deemed expedient by such Court or judge so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter, wholly or in part, with the assistance of such assessor or assessors.

Remuneration of assessors.

(2.) The remuneration, if any, to be paid to such assessors shall be determined by the Court or a judge. R. S., c. 104, s. 28.

Forms and procedure before
Judicature Act and rules continued in certain cases.

44. Save as by this Chapter or by any rules of court it is otherwise provided, all forms and methods (as nearly as may be) of procedure, which, immediately preceding the first day of October, A.D. 1884, were in force in the Supreme Court, under or by virtue of any law, general order or rule whatsoever, and which are not inconsistent with this Chapter or with any rules of court, may continue to be used and practised in the Supreme Court in such and the like cases and for such and the like purposes as those to which they would have been applicable in the Supreme Court prior to the said date. R. S., c. 104, s. 33.

RULES OF COURT.

Rules of Court, power to make.

45. The judges of the Supreme Court or a majority of them may at a meeting held for that purpose annul, or alter and amend, any rule or rules of court for the time being in force, and make any further or additional rules of court for carrying this Chapter into effect, and in particular for all or any of the following matters, namely :—

Sittings.

(1.) For regulating the sittings of the Court and of the judges of the Court in chambers.

Pleadings and practice, &c.

(2.) For regulating the pleading, practice and procedure in the Court, and the rules of law which are to prevail in relation to remedies in causes and proceedings therein.

Juries.

(3.) For the providing of juries either common or special for the trial of jury causes either at the regular or any special sittings of the Court.

Appeals.

(4.) For the hearing of appeals from county courts, or a judge of a county court, from courts of probate

or from any other courts or officers, and for the hearing R.S., c. 155.
of motions and of appeals from any of the judges of the
Supreme Court, sitting for the trial of causes, or the
transaction of any other business in Halifax or on
circuit, and for regulating the selection of the judges of
the Supreme Court, who shall hear such appeals, or
motions, and for regulating all matters relating to the
practice on such hearings.

(5.) For regulating the payment, transfer or deposit, Payment into court.
into, or in, or out of, any court, of any money or
property, or the dealing therewith.

(6.) Generally for regulating any matter relating Generally.
to the practice and procedure of the Supreme Court, or
to the duties of the officers thereof, or to the costs of
proceedings therein, and every other matter deemed
expedient for the better attaining the ends of justice,
advancing the remedies of suitors, and carrying into
effect the provisions of this Chapter, and of all other
statutes now or hereafter in force respecting the said
Court. R. S., c. 104, ss. 34 part, 38. 1889, c. 5, s. 1.
1896, c. 17, s. 1.

46. The Rules of the Supreme Court in the schedule Rules of Court revised, brought into force.
to this Chapter shall come into force at the time of the
coming into force of this Chapter.

47. All rules of court made in pursuance of this Rules of Court to be published in Gazette.
Chapter shall, from and after the publication thereof in
the *Royal Gazette*, regulate all matters to which they
extend, until annulled or altered in pursuance of this
Chapter. R. S., c. 104, s. 35.

48. Subject to any rules of court which are made Power of Judges to make rules before Judicature Act and rule, continued.
under the provisions of this Chapter, the judges of the
Supreme Court shall continue to have and exercise all
the powers which immediately preceded the coming into
force of this Chapter they possessed or exercised as to
making rules of court for the regulation of the practice
of the Court. R. S., c. 104, s. 36.

49. Where any provisions in respect to the Supreme Rules of Court to modify statutes relating to practice in certain cases.
Court are contained in any statute, rules of court may
be made for modifying such provisions to any extent
that is deemed necessary for adapting the same to the
practice and procedure of the Supreme Court, unless, in
the case of any Act passed after the coming into force of
this Chapter, this power is expressly excluded with
respect to such Act or any provision thereof. R. S., c.
104, s. 37.

R. S., c. 155.

Rules of Court
to be submitted
to Legislature.

50. All rules of court made in pursuance of this Chapter shall be laid before the House of Assembly and Legislative Council of Nova Scotia within twenty days next after the same are made, if the Legislature is then sitting, and if the Legislature is not then sitting within twenty days after the meeting of the Legislature next after such rules are made, and if an address praying that any such rules may be cancelled is presented to the Lieutenant-Governor by the said House of Assembly or Legislative Council within the twenty days on which the Legislature has been sitting next after such rules are laid before it, the Governor-in-Council may thereupon, by Order-in-Council, annul the same, and the rules so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which in the meantime have been taken under the same. R. S., c. 104, s. 42.

GENERAL PROVISIONS.

Officers of
Court, duties of
prescribed by
rules.

51. Subject to any order in that behalf, the business to be performed in the Supreme Court or in the chambers of any judge thereof, other than that performed by the judges, shall be distributed among the several officers attached to the said Court, in such manner as is directed by rules of court; and such officers shall perform such duties in relation to such business as is directed by rules of court; and subject to such rules of court, all such officers respectively shall continue to perform the same duties, as nearly as may be, and in the same manner, as before this Chapter came into force. R. S., c. 104, s. 39.

Official referees,
certain officials,
to be.

52. Subject to rules of court the judges of the county courts, masters in chancery, prothonotaries, and clerks of the Crown shall be official referees for the trial of such questions as are directed to be tried by such officers, and the Governor-in-Council may, if necessary, appoint additional official referees. R. S., c. 104, s. 40.

Provisions of
Act remedial
and to receive
liberal con-
struction.

53. Every provision of this Chapter and of the rules of the Supreme Court shall be deemed remedial, and shall receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the objects of the said Chapter and rules according to their true intent, meaning and spirit. R. S., c. 104, s. 46, part.

SCHEDULE TO JUDICATURE ACT.

NOTE.—The memorandum at the end of each Rule is intended to indicate the rule or enactment from which the rule, as therein expressed, has been transcribed or adapted.

"E." refers to the English Judicature Rules of 1883.

"O. (1897)" refers to the Consolidated Rules of Practice of the Supreme Court of Judicature for Ontario of 1897.

"S. C. A." refers to Cap. 89, R. S., 4th Series, "Of the Supreme Court and its Officers."

"P. A." refers to the Practice Act, Cap. 94, R. S., 4th Series.

"E. A." refers to the Equity Act, Cap. 95, R. S., 4th Series.

"E. R. S. C." refers to English Rules of Court made subsequent to the English Judicature Rules of 1883.

"S. C. R." refers to Supreme Court Rules, Nova Scotia, made subsequent to the Rules of the Supreme Court 1884.

"R. S." refers to Revised Statutes of Nova Scotia, 5th Series.

THE RULES OF THE SUPREME COURT.

PRELIMINARY.

The following Orders and Rules may be cited as ^{as Title, date and application} "The Rules of the Supreme Court." They shall be in operation on and after the date of the coming into force of "The Judicature Act," Revised Statutes, and shall also apply, so far as is practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all causes and matters then pending.

ORDER I.

**Order I.
rr. 1—2.**

FORM AND COMMENCEMENT OF ACTION.

1. All actions and suits which, previously to the first day of October, A.D. 1884, were commenced by writ, bill, or information in the Supreme Court, shall be instituted in the said Court by a proceeding to be called an action. (E. 1.) ^(1.) Actions, how commenced.

2. All other proceedings in, and applications to, the Supreme Court may, subject to these rules, be taken and made in the same manner as they would have been taken and made if the Act had not been passed. (E. 2.) ^(2.) Proceedings other than actions.

Order II.**RR. 1—6.****ORDER II.**

WRIT OF SUMMONS AND PROCEDURE RELATING THERETO.

(3.)
All actions com-
menced by writ
of summons.

1. Every action in the Supreme Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action. (E. 3.)

(4.)
Prolix forms,
costs of.

2. Any costs occasioned by the use of any forms of writs and of indorsements thereon, other or more prolix than the forms hereinafter prescribed, shall be borne by the party using the same, unless the Court or a judge otherwise directs. (E. 4.)

(5.)
Forms of writ.

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the forms Nos. 1 and 2 in appendix A, part I, with such variations as circumstances require. (E. 5.)

(6.)
Leave to be ob-
tained, writ and
notice for ser-
vice out of
jurisdiction.

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a judge. (E. 6.)

(7.)
Forms of writ
and notice for
service out of
jurisdiction.

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the forms Nos. 3 and 4 in appendix A, part I, with such variations as circumstances require. Such notice shall be in form No. 5 in the same part, with such variations as circumstances require. (E. 7.)

(8.)
Date of writ.
Teste abolished.

6. Every writ of summons and also (unless by any statute or by these rules it is otherwise provided), every other writ shall bear date on the day on which the same is issued. The teste of all writs is abolished. (E. 10.)

Order III.**RR. 1—3.****ORDER III.**

INDORSEMENTS OF CLAIM.

(9.)
Indorsement on
writ.

1. The indorsement of claim shall be made on every writ of summons before it is issued. (E. 11.)

(10.)
Not essential to
be precise under
O. II. r. 1.

2. In the indorsement required by Order II, Rule I, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled. (E. 12.)

(11.)
Forms of in-
dorsement.

3. The indorsement of claim shall be to the effect of such of the forms in part III of appendix A hereto

as is applicable to the case, or if none is found applicable then of such other similarly concise form as the nature of the case requires. (E. 13.)

Order III.
rr. 4-6.

4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show in manner appearing by such of the forms in appendix A, part III, section V., as is applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued. (E. 14.)

(12.)
Indorsement to
show represen-
tative capacity.

5. In all actions in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A.) upon a contract express or implied, (as for instance on a bill of exchange, promissory note, a check, or other simple contract debt); or (B.) on a bond or contract under seal for payment of a liquidated amount of money; or (C.) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (D.) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (E.) on a trust; or (F.) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a tenant whose term has expired or has been duly determined by notice to quit, or against persons claiming under such tenant; the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be entitled. Such special indorsement shall be to the effect of such of the forms in appendix C, section III, as is applicable to the case. (E. 16.)

(13.)
Special indorse-
ments.

6. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, shall state the amount claimed for debt, or in respect of such demand, and for costs, respectively, and shall further state that upon payment thereof within six days after service, or, in case of a writ not for service within the jurisdiction, within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the form in appendix A, part III, sec. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one sixth is disallowed the plaintiff's solicitor shall pay the costs of taxation. (E. 17.)

(14.)
Debt or liqui-
dated demand,
indorsement for.

Order III.**r. 7.**

(15.)
Indorsement in
action for
account.

7. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken. (E. 18.)

order IV.**rr. 1-3.****ORDER IV.****INDORSEMENT OF ADDRESS.**

(16.)
Address for ser-
vice and of his
solicitor to be
indorsed.
Address for
service.

1. The solicitor of a plaintiff, suing by a solicitor, shall indorse on the writ and notice in lieu of service of a writ, the address of the plaintiff, and also his own name or firm and place of business (within the jurisdiction), which latter address shall be the place where writs, notices, petitions, orders, and other documents, proceedings, and written communications may be left for him. (E. 19.)

(17.)
Plaintiff suing
in person, ad-
dress of.

2. Where a plaintiff sues in person he shall indorse on the writ of summons, or notice in lieu of service of a writ of summons, his occupation and place of residence, and, if his place of residence is not within the jurisdiction, another place within the jurisdiction to be called his address for service, where writs, notices, pleadings, petitions, orders, summonses, and other documents, proceedings, and written communications may be left for him. (E. 20.)

(18.)
Where proceed-
ings commenced
otherwise than
by writ.

3. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding rules of this order shall apply to the document by which such proceedings were originated as if it was a writ of summons. (E. 22.)

Order V.**rr. 1-4.****ORDER V.****ISSUE OF WRIT OF SUMMONS.**

(19.)
Writ may be is-
sued out of any
county.

1. In any action the plaintiff, wherever resident, may issue a writ of summons in any county. (E. 23.)

(20.)
Issued out of a
Prothonotary's
office.

2. Every writ of summons shall be issued out of the office of one of the prothonotaries. (E. 24.)

(21.)
Writs, may be
written or
printed.

3. Writs of summons shall be prepared by the plaintiff or his solicitor, and may be written or printed, or partly written and partly printed. (E. 32.)

(22.)
To be sealed.

4. Every writ of summons shall be sealed by the officer issuing the same, and shall thereupon be deemed to be issued. (E. 33.)

5. The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy written or printed, or partly written and partly printed, of such writ and of all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person. (E. 34.)

Order V.
rr. 5 & 6.

(23.)
Copy to file.

6. The prothonotary on receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which cause books are now kept; and the action shall be distinguished by the date of the year, and a letter and number. (E. 35.)

(24.)
Copy to be filed
—entries to be
made in Cause
Book.

ORDER VI.

CONCURRENT WRITS.

Order VI.
rr. 1—2.

1. The plaintiff in any action may, at the time of, or at any time during twelve months after the issuing of, the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear the date of the original writ, and be marked in the margin, with the word “concurrent” and the date of issuing the concurrent writ: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action is in force. (E. 40.)

(25.)
How issued.

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction, may be issued and marked as a concurrent writ with one for service within the jurisdiction. (E. 41.)

(26.)
Writs for ser-
vice abroad and
within Province
may be con-
current.

ORDER VII.

DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

Order VII.
r. 1.

1. Every solicitor whose name is indorsed on any writ or summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his

(27.)
By plaintiff's
solicitor.

Order VII. authority or privity; and if such solicitor declares that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a judge. (E. 42.)

* * * * *

Order VIII.
rr. 1-3.

ORDER VIII.

RENEWAL OF WRIT.

(29.)
Currency of
writ.

Renewal.

1. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to the court or a judge for leave to renew the writ; and the court or judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for six months from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ; and the writ shall in such case be renewed by being marked with the day, month and year of such renewal; such renewal to be so marked by the prothonotary, upon delivery to him by the plaintiff or his solicitor of a memorandum in form No 6, in appendix A, part I, with such variations as circumstances require; and a writ of summons so renewed shall remain in force and be available, to prevent the operation of any statute whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the issuing of the original writ of summons. (E. 45.)

(30.)
Evidence of
renewal.

2. The production of a writ of summons purporting to have been renewed in manner aforesaid, shall for all purposes be sufficient evidence of the writ having been so renewed, and of the commencement of the action on the date of the issue of the original writ of summons so renewed. (E. 46.)

(31.)
Substitution for
lost writ.

3. Where a writ, of which the production is necessary, has been lost, the court or a judge, upon being satisfied of the loss and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ. (E. 47.)

ORDER IX.

Order IX.
rr. 1-8.

SERVICE OF WRIT OF SUMMONS.

1.—Mode of Service.

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service and enters an appearance. (E. 48.) ^(32.) When accepted.

2. When service is required the writ shall, wherever it is practicable, be served by the person by whom, and in the manner in which, personal service is now made; but if it is made to appear to the court or a judge on affidavit that the plaintiff is from any cause unable to effect prompt personal service, the court or judge may make such order for substituted or other service, or for the substitution for service, of notice by advertisement or otherwise, as seems just. (E. 49.) ^(33.) Service as at present. Substituted service.

2.—On Particular Defendants.

3. When husband and wife are both defendants to the action, they shall both be served unless the court or a judge otherwise orders. (E. 50.) ^(34.) Husband and wife to be served.

4. When an infant is a defendant to the action, service on his father or guardian or person appointed by the court shall be deemed good service on the infant unless the court or a judge otherwise orders: Provided that the court or judge may order that service made or to be made on the infant shall be deemed good service. (E. 51.) ^(34.) Infant.

5. Where a lunatic or person of unsound mind, not so found by inquisition or judicial declaration, is a defendant to the action, service on his guardian or person to be appointed by the court as guardian *ad litem* of the lunatic shall, unless the court or judge otherwise orders, be deemed good service on such defendant. (E. 52 and O. (1897) rr. 157, 158.) ^(35.) Lunatic.

* * * * *

8. In the absence of any statutory provision regulating service of process, any writ of summons, petition or other process may be served upon any corporation, or any society or fellowship, or any body or number of persons whether corporate or otherwise, by serving the same on the principal officer thereof, or on the clerk or secretary. (E. 55 and P. A. 41.) ^(39.) Corporations.

Order IX.
rr. 9-10.(40.)
Vacant pos-
session.*3.—In Particular Actions.*

9. Service of a writ of summons in an action to recover land, may, in case of vacant possession, when it cannot otherwise be effected, be made by posting a copy of the writ upon the door of the dwelling house or other conspicuous part of the property. (E. 56.)

4.—Generally.(41.)
Indorsement of
date of receipt
and of service.

10. (1.) The person serving a writ of summons shall immediately on receiving the writ, indorse thereon the day of the month and week of the receipt of the same, and shall, within three days at most after service, indorse thereon the day of the month and week of the service thereof.

Affidavit of
service.

(2.) Every affidavit of service of such writ shall mention the day on which indorsement was made, and such affidavit may be sworn before a justice of the peace or any person having authority to take affidavits in the court. This rule shall apply to substituted as well as other service. (E. 62 and P. A. 39. S. C. R. 10th Dec., 1884, r. 4.)

Order X.
r. I.**ORDER X.**

SUBSTITUTED SERVICE.

(42.)
Affidavit to set
forth grounds.

Every application to the court or a judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds on which the application is made. (E. 63.)

Order XI.
r. I.**ORDER XI.**

SERVICE OUT OF THE JURISDICTION.

(43.)
In what cases.

1. Service out of the jurisdiction of a writ of summons, or notice of a writ of summons, may be allowed by the court or a judge whenever—

- (a.) The whole subject-matter of the action is land situated within the jurisdiction (with or without rents or profits); or
- (b.) Any Act, deed, will, contract, obligation, or liability affecting land or hereditaments, situated within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or

- (c.) Any relief is sought against any person domiciled, or ordinarily resident, within the jurisdiction ; **Order XI.**
 or **rr. 2-3.**
- (d.) The action is for the administration of the personal estate of any deceased person who at the time of his death was domiciled within the jurisdiction, or for the execution as to property situated within the jurisdiction, of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Nova Scotia ; or
- (e.) The action is founded on any breach, or alleged breach, within the jurisdiction, of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction ; or
- (f.) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof ; or
- (g.) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction. (E. 64.)

2. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and shewing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made ; and no such leave shall be granted unless it is made sufficiently to appear to the court or judge that the case is a proper one for service out of the jurisdiction under this Order. (E. 67.)

3. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice, within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given. (E. 68.)

(41.)
 Affidavit re-
 quired.

(45.)
 Time for ap-
 pearance.

**Order XI.
rr. 4-5a.**(46.)
When notice
only to be served(47.)
Notice, how
served.(47a.)
Service out of
jurisdiction of
originating sum-
mons and
petition.

4. When the defendant is neither a British subject nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him. (E. 69.)

5. Notice in lieu of service shall be given in the manner (as nearly as may be) in which writs of summons are served. (E. 70.)

5a. Service out of the jurisdiction of an originating summons or of a petition may be allowed by the court or a judge in like cases in which such service would be allowed in respect to a writ of summons or notice of a writ of summons and subject to the like provisions. R. S. C., May 15th, 1899.

**Order XII.
rr. 1-4.****ORDER XII.**

APPEARANCE.

(48.)
Notice when to
appear.(49.)
How appear-
ance entered.(50.)
Notice of ap-
pearance.(51.)
Address.

1. In all cases the writ of summons shall name, in a memorandum subscribed thereon, the county and place in which the defendant's appearance is to be entered. R. S., c. 104, O. 12, r. 1.

2. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing, dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall, at the same time, deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal. (E. 78.)

3. A defendant shall, on the day on which he enters an appearance to a writ of summons, give notice of his appearance (form No. 2, appendix A, part II,) to the plaintiff's solicitor, or if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way on the plaintiff's solicitor, or at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum. (E. 79.)

4. A defendant appearing in person shall state in such memorandum his address. The solicitor of a

defendant appearing by a solicitor, shall state in such memorandum his address. The address so stated shall be the address for service. (E. 80, 81.) **Order XII.
rr. 5-15.**

5. If the memorandum does not contain the address required by the preceding rule, the memorandum shall not be received; and if such an address is illusory or fictitious, the appearance may be set aside by the court or a judge on the application of the plaintiff; and the plaintiff may be permitted by the court or judge to proceed by posting up the proceedings in the office from which the writ was issued. (E. 82.) ^(52.) Defective address.

6. The memorandum of appearance may be in the form No. 1, appendix A, part II, with such variations as the circumstances of the case require. (E. 83.) ^(53.) Form.

7. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the Cause Book. (E. 84.) ^(54.) Entry in Cause Book.

* * * * *

10. If two or more defendants in the same action appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum. (E. 87.) ^(57.) Two or more defendants

11. A solicitor not entering an appearance in pursuance of his written undertaking so to do, shall be liable to an attachment. (E. 88.) ^(58.) Undertaking to appear.

12. A defendant may appear at any time before judgment. If he appears at any time after the time limited by the writ for appearance he shall not, unless the court or a judge otherwise orders, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ. (E. 92.) ^(59.) Appearance any time before judgment.

13. Any person not named as a defendant in any writ of summons for the recovery of land may, by leave of the court or a judge, appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant. (E. 95.) ^(60.) Appearance by person not defending.

14. Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord. (E. 96.) ^(61.) Appearance by landlord so to state.

15. Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the court or a judge to appear and defend, he shall enter an appearance, according to the foregoing ^(62.) By person not named as defendant.

Order XII.
rr. 16-18.

rules of this Order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action. (E. 97.)

(63.)
Defence as to
part.

16. Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the action and signed by him or his solicitor. Such notice shall be served within four days after appearance; and an appearance where the defence is not so limited shall be deemed an appearance to defend for the whole. (E. 98.)

(64.)
Form.

17. The notice mentioned in the last preceding rule shall be in the form No. 3, appendix A, part II, with such variations as circumstances require. (E. 99.)

(65.)
Notice of
motion to set
aside proceed-
ings.

18. A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorizing such service. (E. 100.)

Order XIII.
r. 1.**ORDER XIII.**

DEFAULT OF APPEARANCE.

(66.)
By person under
disability.

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant, or a person of unsound mind not so found by judicial decision or inquisition, the plaintiff shall, before further proceeding with the action against such defendant, apply to the court or a judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least six clear days before the day in such notice named for hearing the application, served upon, or left at the dwelling house of, the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant

not residing with or under the care of his father or guardian), served upon or left at the dwelling house of the father or guardian, if any, of such infant, unless the court or judge at the time of hearing such application shall dispense with such last mentioned service. (E. 101.)

Order XIII.
PP. 2-6.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following rules of this Order, or under Order XV, rule 1, he shall, before taking such proceeding upon default, file an affidavit of service of the writ, or of service of notice in lieu of service of the writ as the case may be. (E. 102.)

(67.)
Affidavit of service.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate is specified) at the rate of six per cent. per annum, to the date of the judgment and costs. (E. 103.)

(68.)
Judgment entered if writ indorsed.

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the next preceding rule, against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared. (E. 104.)

(69.)
When several defendants.

5. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and the defendant fails, or all the defendants, if more than one, fail to appear, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the court or judge may direct. (E. 105.)

(70.)
On claim for detention.

6. Where the writ is indorsed as in the next preceding rule mentioned, and there are several defendants, of

(71.)
Where several defendants.

Order XIII.
rr. 7-10.

whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the court or a judge otherwise directs: Provided that the court or a judge may order that instead of a writ of inquiry or trial, the value of the goods and amount of damages, or either of them, shall be ascertained in any way which the court or judge directs. (E. 106.)

(72.)
Claim for dam-
ages and liqui-
dated demand.

7. Where the writ is endorsed with a claim for detention of goods and pecuniary damages, or either of them, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding rules of this Order as are applicable. (E. 107.)

(73.)
Action for land.

8. If no appearance is entered in an action for the recovery of land, within the time limited for appearance, or if an appearance is entered but the defence is limited to part only, the plaintiff may enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply. (E. 108.)

(74.)
Mesne profits
and damages,
&c.

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, he may enter judgment as in the next preceding rule mentioned, for the land; and may proceed as in the other preceding rules of this Order mentioned, as to such other claim so indorsed. (E. 109, E. R. S. C., Nov. 1893, r. 1, (b).)

(75.)
Setting aside
judgment.

10. Where judgment is entered pursuant to any of the preceding rules of this Order, the court or a judge may set aside or vary such judgment upon such terms as are just. (E. 110.)

11. Where the action is in respect of a mortgage, and the plaintiff claims foreclosure or sale, or redemption, or where the action is for the administration of an estate, or for a partition, except as is otherwise provided by these rules, the plaintiff shall be entitled to a judgment on such evidence (if any) and in such cases (as nearly as may be), as is provided for by the practice immediately preceding the first day of October, A. D. 1884, relative thereto. (O. (1881) r. 78.)

Order XIII.
rr. 11-12.
(76.)
Foreclosure,
partition, ad-
ministration, &c.

12. Where the action is in respect of a mortgage the following provisions shall apply to every application to the court or a judge for an order for foreclosure or foreclosure and sale, where the defendant has not appeared :—

(77.)
Foreclosure,
proof in.

(a.) The plaintiff shall produce a certificate of the registrar of deeds for the registration district in which the mortgaged premises lie, setting forth all the incumbrances registered against such premises.

Registrar's cer-
tificate.

(b.) He shall show by affidavit to the satisfaction of the court or a judge the following facts :

Affidavit, 2 re-
quirements of.

(i) That the writ of summons or notice in lieu of writ of summons has been served upon the defendant or a substituted service effected.

(ii) That the defendant has not entered an appearance, although the period limited therefor has expired.

(iii) That the allegations contained in the statement of claim are true.

(c.) He shall produce a statement, verified by the affidavit of himself or some person having personal knowledge of the facts, shewing all payments which have been made on account of principal or interest, and the dates of such payments, so as to enable the court or judge to check the computation of the amount alleged to be due, and shall produce such other proof as the peculiar circumstances of the case require to entitle him to the order applied for.

(d.) The court or a judge shall ascertain and determine the amount due to the plaintiff, or may refer the matter to a referee to take an account, and if it appears that there are persons other than the defendant, such as

Foreclosure,
amount due as-
certained by
Judge or by
reference.

Order XIII.
rr. 13—13a.

subsequent incumbrancers, having an interest in the mortgaged premises, who ought to be present at the taking of the accounts, the referee may be directed to give notice to such persons to attend the taking of the same.

Foreclosure,
terms of sale.

(e.) The court or a judge may direct a sale of the property on such terms as the court or a judge thinks fit, and without previously determining the priorities of incumbrancers or the amount due on their incumbrances.

Subsequent ac-
counts, &c.

(f.) All subsequent accounts may from time to time be taken, subsequent costs taxed and necessary proceedings had for redemption, by any of the parties entitled to redeem the mortgaged premises as if specific directions for this purpose were contained in the order.

CASES NOT SPECIALLY PROVIDED FOR.

(78.)
In other cases
action may
proceed.

13. In all actions not by the rules of this Order otherwise specially provided for, if the party served with the writ does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Order III, rule 5, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV. (E. 112.)

(78a.)
Default of ap-
pearance to
originating
summons.

13A. Where a defendant or respondent to an originating summons to which an appearance is required to be entered fails to appear within the time limited, the plaintiff or applicant may apply to the court or a judge for an appointment for the hearing of such summons, and upon a certificate that no appearance has been entered, the court or judge shall appoint a time for the hearing of such summons, upon such conditions (if any) as they or he thinks fit. (E. 114 a., E. R. S. C., Nov. 1893, r. 2.)

ORDER XIV.

Order XIV.
rr. 1a-3a.LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT SPECIALLY
INDORSED.

1. (a.) Where the defendant appears to a writ of summons specially indorsed under Order III, rule 5, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply to a judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The judge may thereupon, unless the defendant by affidavit, by his own *viva voce* evidence, or otherwise, satisfies him that he has a good defence to the action on the merits, or discloses such facts as are deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

(79.)
Application for
judgment.

(b.) If on the hearing of any application under this rule it appears that any claim which could not have been specially indorsed under Order III, rule 5, has been included in the indorsement of the writ, the judge may, if he thinks fit, forthwith amend the indorsement by striking out such claim, or may deal with the claim specially indorsed as if no other claim had been included in the indorsement, and allow the action to proceed as respects the residue of the claim. (E. 115; E. R. S. C., Nov. 1893, r. 3, (1) (a), (b).)

Indorsement
may be
amended.

2. The application by the plaintiff for leave to enter final judgment under the next preceding rule, shall be made by summons returnable not less than four clear days after service, accompanied by a copy of the affidavit and exhibits referred to therein. (E. 116.)

(80.)
Summons to
show cause.

3. (a.) The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land), by offering to bring into court the sum indorsed on the writ, or the judge may allow the defendant to be examined upon oath.

(81.)
Showing cause.

(b.) Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim.

(c.) The judge may, if he thinks fit, order the defendant, or in the case of a corporation any officer thereof, to attend and be examined upon oath; or to pro-

Order XIV. duce any leases, deeds, books, or documents, or copies of
rr. 4—9a. or extracts therefrom. E. 117; E. R. S. C., Nov. 1893,
 r. 3, (3.)

(82.)
 Defence as to
 part.

4. If it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution or the payment of the amount levied or any part thereof into court by the sheriff, the taxation of costs, or otherwise, as the judge thinks fit; and the defendant may be allowed to defend as to the residue of the plaintiff's claim. (E. 118.)

(83.)
 Defence by
 some defend-
 ants.

5. If it appears to the judge that any defendant has a good defence to, or ought to be permitted to defend, the action, and that any other defendant has not such defence and ought not to be permitted to defend, the former may be permitted to defend, and the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former. (E. 119.)

(84.)
 Leave to defend.

6. Leave to defend may be given unconditionally, or subject to such terms as to giving security, or time, or mode of trial or otherwise, as the judge thinks fit. (E. 120; E. R. S. C., Nov. 1893, r. 3, (6).)

(84a.)
 Summary
 disposal.

7. The judge may with the consent of all parties dispose of the action finally and without appeal in a summary manner. (E. 120a; E. R. S. C., Nov. 1893, r. 3, (7).)

(84b.)
 Directions as to
 trial

8. Where leave, whether conditional or unconditional, is given to defend, the judge shall have power to give all such directions as to the further conduct of the action as might be given on a summons for directions, and may order the action to be forthwith set down for trial. (E. 120 b part; E. R. S. C., Nov. 1893.)

(84c.)
 Costs.

9. (a.) The costs of and incident to all applications under this Order shall be dealt with by the judge on the hearing of the application, who shall order by and to whom, and when, the same shall be paid, or may refer them to the judge at the trial: Provided that in case no trial afterwards takes place, or no order as to costs is made, the costs are to be costs in the cause.

(b.) If the plaintiff makes an application under this Order XIV. Order where the case is not within the Order, or where the plaintiff, in the opinion of the judge, knew that the defendant relied on a contention which would entitle him to unconditional leave to defend, in any of such cases the application shall be dismissed with costs to be paid forthwith by the plaintiff. (E. 120 c; E. R. S. C., Nov. 1893, r. 3, (9.)

ORDER XV.

Order XV.
rr. 1—2.

APPLICATION FOR ACCOUNT.

1. Where a writ of summons has been indorsed for an account, under order III, rule 7, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the court or judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions now usual in similar cases, shall be forthwith made. (E. 124.)

(85.)
Default as to
account.

2. An application for such order as is mentioned in the next preceding rule shall be made by summons, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired. (E. 122.)

(86.)
Summons on
affidavit.

ORDER XVI.

Order XVI.
r. 1.

PARTIES.

1.—*Generally.*

1. All persons may be joined in one action as plaintiffs in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons brought separate actions any common question of law or fact would arise: provided that, if upon the application of any defendant it appears that such joinder may embarrass or delay the trial of the action, the court or a judge may order separate trials, or make such other order as is expedient, and judgment may be given for such one or more of the plaintiffs as are found to be entitled to relief, for such relief as he or

(87.)
Joinder of
plaintiffs.

Order XVI.
rr. 2-7.

they are entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the court or a judge in disposing of the costs otherwise directs. (E. 123; E. R. S. C., 26th Oct. 1896.)

(88.)
Wrong plaintiff
by mistake.

2. Where an action has been commenced in the name of a wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the court or a judge, if satisfied that it has been so commenced through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff, upon such terms as are just. (E. 124.)

(89.)
Set-off not
affected by
misjoinder.

3. Where in any action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon. (E. 125.)

(90.)
Joinder of de-
fendants.

4. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as are found to be liable, according to their respective liabilities, without any amendment. (E. 126.)

(91.)
Defendants not
interested as to
all proceedings.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the court or a judge may make such order as appears just, to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he has no interest. (E. 127.)

(92.)
All contracting
parties may be
joined.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange and promissory notes. (E. 128.)

(93.)
Where doubts
exist.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as is hereinafter mentioned, or as is prescribed

by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties. (E. 129.)

Order XVI.
rr. 8—8d.

8. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the court or a judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties. (E. 130.)

(91.)
Representatives

8A. Where a mortgagee has died, the proceedings in actions for foreclosure or foreclosure and sale may be taken and carried on by his executors or administrators and in their name, and they shall represent the heirs and persons interested in the estate of the deceased. (S. C. R., March 1st, 1898.)

(94a.)
Foreclosure, dispensing with parties in.

8B. Except when otherwise ordered, it shall not be necessary to make the heirs-at-law, or devisees, or widow of a deceased mortgagor, or of a deceased owner of the equity of redemption, parties to an action for foreclosure or foreclosure and sale, but the executors or administrators of such deceased person may be made parties and be proceeded against, and they shall represent the heirs-at-law, devisees and widow, or any of them, as the case may be. (S. C. R., March 1st, 1898.)

(9 b.)
Heirs, devisees, or widow of deceased mortgagor or of owner not necessary.

8c. If there are no executors or administrators, or none within the jurisdiction, the court or a judge on application, before the issuing of the writ of summons, may appoint a party to represent the heirs and persons interested in the estate of the deceased, and the court may direct such proceedings as are necessary for promoting or protecting the claims and rights of any persons who may be interested in the mortgaged premises or the proceeds thereof. (S. C. R., March 1st, 1898.)

(94c.)
Defendant appointed by court if no executors or administrators.

8d. It shall not be necessary to make beneficiaries or subsequent incumbrancers defendants, but the court or a judge may direct notice to be given to the beneficiaries or subsequent incumbrancers by mailing a notice of the order with a copy of the advertisement of sale, and after such notice any such beneficiary or subsequent incumbrancer shall be bound by the proceedings in the same manner as if he had originally been made a party, and any person so notified may within one month thereafter

(94d.)
Beneficiaries or subsequent incumbrancers not necessary.

Order XVI.
rr. 9-10.

apply to the court or a judge to discharge, vary or add to the said order, or for such other relief in the action as he is entitled to, and the court or a judge in addition to directing such notice to be given, may direct such proceedings as are necessary to protect the rights of the parties. (S. C. R., March 1st, 1898.)

(95.)
Where parties
numerous.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the court or a judge to defend, in such cause or matter, on behalf of or for the benefit of all persons so interested. (E. 131.)

(95a.)
Power to ap-
prove com-
promise in ab-
sence of some
of the persons
interested.

9A. Where in proceedings concerning a trust a compromise is proposed and some of the persons interested in the compromise are not parties to the proceedings, but there are other persons in the same interest before the court and assenting to the compromise, the court or a judge, if satisfied that the compromise will be for the benefit of the absent persons, and that to require service on such persons would cause unreasonable expense or delay, may approve the compromise and order that the same shall be binding on the absent persons, and they shall be bound accordingly, except where the order has been obtained by fraud or non-disclosure of material facts. (E., O. 16, r. 9A, E. R. S. C., Nov. 1893, r. 5.)

(96.)
Remedy for non-
joinder and mis-
joinder.

10. No cause or matter shall be defeated by reason of the mis-joinder or non-joinder of parties, and the court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The court or a judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as appear to the court or a judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons, or notice, in manner hereinafter mentioned, or in such manner as is prescribed

by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice. (E. 133.)

Order XVI.
rr. 11 19.

37.8¹³

B7E

(97.)

Application to
amend as to
parties.

11. Any application to add, or strike out, or substitute a plaintiff or defendant may be made to the court or a judge at any time before trial by notice of motion or summons, or at the trial of the action in a summary manner. (E. 134.)

12. Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the court or a judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ, or notice in lieu of service thereof, in the same manner as original defendants are served. (E. 135.)

(98.)

Serving new
defendant with
writ.

13. If a statement of claim has been delivered before such defendant has been added, the same shall, unless otherwise ordered by the court or judge, be amended in such manner as the making such new defendant a party renders desirable; and a copy of the amended statement of claim shall be delivered to the new defendant with the writ or notice. (O. (1897), r. 208,)

(99.)

Serving with
statement of
claim.

* * * * *

3.—Persons under disability.

16. Infants may sue as plaintiffs by their next friends, in the manner heretofore practised; and may in like manner defend by their guardians appointed for that purpose. (E. 138, part.)

(102.)

Infants.

17. Married women may sue and be sued as provided by the statutes in force to that effect. (E. 138, part.)

(103.)

Married women.

18. Where lunatics and persons of unsound mind, not so found by judicial decision or inquisition, might respectively, immediately preceding the first day of October, A.D. 1884, have sued as plaintiffs, or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their guardian, or next friend, according to the practice immediately preceding the said first day of October, except as amended by these rules, and may in like manner defend any action by their committees or guardians appointed for that purpose. (E. 139.)

(104.)

Lunatics.

19. An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance, shall make and file an

(105.)

Appearance by
guardian.

Order XVI. affidavit in the form No. 8 in appendix A, part II, with
rr. 20-25. such variations as circumstances require. (E. 140.)

(106.)
 Order not neces-
 sary.

20. Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the next preceding rule mentioned. (E. 141.)

(107.)
 Consent to be
 next friend.

21. Before the name of any person is used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed. (E. 142.)

(108.)
 Consent by next
 friend, &c.

22. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or judicial decision or not, or person under any other disability, is a party, any consent as to the mode of taking evidence, or as to any other procedure shall, if given with the consent of the court or a judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability, and had given such consent: Provided that no such consent by any committee, next friend, or guardian of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the court or a judge. (E. 143.)

4.—Proceedings by or against Paupers.

(109.)
 Paupers.

23. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth \$50, his wearing apparel and the subject matter of the cause only excepted. (E. 144.)

(110.)
 Opinion of
 counsel.

24. A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding. (E. 145.)

(111.)
 Case verified.

25. No person shall be permitted to sue as a pauper, unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, is produced before the court or judge to whom the application is made; and no fee shall be payable by a pauper to his counsel or solicitor. (E. 146.)

26. A person admitted to sue or defend as a pauper shall not be liable to any court fee. (E. 147.)

**Order XVI.
rr. 26—33.**

(112.)

No court fee.

(113.)

Counsel, &c., to be assigned.

27. Where a person is admitted to sue or defend as a pauper, the court or a judge may, if necessary, assign counsel, or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the court or judge that he has some good reason for refusing. (E. 148.)

28. Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him, any fee, profit, or reward for the conduct of his business in the court, and any person who takes or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of court. (E. 149.)

(114.)

No fee permitted.

29. If any person, admitted to sue or defend as a pauper, gives or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper. (E. 150.)

(115.)

Punishment, &c., for paying fee.

30. No notice of motion shall be served, or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor. (E. 151.)

(116.)

Solicitor to sign notices, &c.

31. It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper, to take care that no notice is served, or summons issued, or petition presented, without good cause. (E. 152.)

(117.)

Duty of pauper's solicitor.

32. Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the court or a judge otherwise directs, be taxed as in other cases. (E. 153.)

(118.)

Costs to be taxed.

5.—Administration and Execution of Trusts.

33. (a.) In any case in which the right of any heir-at-law or the next of kin or a class depends upon the construction which the court or a judge puts upon an instrument, and it is not known or is difficult to ascertain who is or are such heir-at-law or next of kin or class, and the court or judge considers that in order to save expense, or for some other reason, it will be convenient to have the questions of construction determined before such heir-at-law, next of kin or class have been ascertained by means of inquiry or otherwise,

(119.)

Persons appointed to represent a class.

Order XVI.
rr. 33b-39.

the court or judge may appoint some one or more persons to represent such heir-at-law, next of kin or class, and the judgment or order of the court or judge in the presence of such persons shall be binding upon the heir-at-law, next of kin or class so represented. (E. 154.)

(119b.)
Power to ap-
point person to
represent absent
parties.

33. (b.) In any other case in which any heir-at-law, or any next of kin or a class is interested in any proceedings, the court or judge may, if, having regard to the nature and extent of the interest of such persons or any of them, it appears expedient, on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such heir, or to represent all or any of such next of kin or class, and the judgment or order of the court or judge in the presence of the persons so appointed shall be binding upon the persons so represented. (E., O. 16, r. 32 (b), E. R. S. C., Nov. 1893, r. 6.)

(120.)
Residuary lega-
tee and next of
kin.

34. Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin. (E. 155.)

(121.)
Legatee with
charge on
realty.

35. Any legatee interested in a legacy charged upon real property, and any person interested in the proceeds of real property directed to be sold, and who is entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate. (E. 156.)

(122.)
Residuary devi-
see and heirs.

36. Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any co-residuary devisee or co-heir. (E. 157.)

(123.)
Cestuis que
trust.

37. Any one of several beneficiaries under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other beneficiary. (E. 158.)

(124.)
Waste.

38. In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest. (E. 159.)

(125.)
Remedy against
one legatee, &c.

39. Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or beneficiary for the adminis-

tration of the estate or the execution of the trusts. **Order XVI.**
(E. 160.) **rr. 40-43.**

40. The court or a judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as is deemed best, and may make such order in any particular case as is deemed best for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question. (E. 161.)

(126.)
Conduct of the
proceedings.

41. (1.) Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made,—

(127.)
Notice to other
parties.

(a.) under Order XV,

(b.) under Order XXXII, or

(c.) affecting the rights or interests of persons not parties to the action,

the court or a judge may direct that any persons interested in the estate, or under the trust, or in the hereditaments, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the court or a judge to discharge, vary, or add to the judgment or order. (E. 162.)

(2.) The provisions of this rule shall apply to causes commenced by originating summons or by petition. (R. S. C., May 15th, 1899.)

In originating
summons and
petitions.

42. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the same manner, and subject to the same provisions, as a defendant entering an appearance. (E. 163.)

(128.)
Person notified,
to appear as
defendant.

43. A memorandum of the service upon any person of notice of the judgment or order in any action under rule 41 shall be entered in the Prothonotary's office upon due proof by affidavit of such service. (E. 164.)

(129.)
Entry of service

**Order XVI.
rr. 44-49.**(130.)
Notice how en-
titled, and form.

44. Notice of a judgment or order served pursuant to rule 41 shall be entitled in the action, and there shall be endorsed thereon a memorandum in the form No. 22, appendix G. (E. 165.)

(131.)
Notice on infant
or lunatic.

45. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition or judicial decision, shall be served in the same manner as a writ of summons. (E. 166.)

(132.)
When heirs-at-
law necessary
parties.

46. In any cause or matter to execute the trusts of a will it shall not be necessary to make the heirs-at-law parties, but the plaintiff shall be at liberty to make the heirs-at-law parties where he desires to have the will established against them. (E. 167.)

(133.)
Where no repre-
sentative.

47. If in any cause, matter, or other proceeding, it appears to the court or a judge that any deceased person who was interested in the matter in question has no legal personal representative, the court or judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding, on such notice to such persons, if any, as the court or judge thinks fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding. (E. 168.)

(134.)
Who to appear
in administra-
tion suits.

48. In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the court or a judge, be entitled to appear either in court or in chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The court or a judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he thinks fit. (E. 169.)

6.—Third Party Procedure.(135.)
Notice to person
liable to contri-
bute to or in-
demnify defen-
dant.

49. When a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the court or a judge, issue a notice (hereinafter called the third party notice) to that effect, stamped with the seal with which

writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the court or a judge, be served within the time limited for delivering his defence. Such notice may be in the form or to the effect of the form No. 1, appendix B, with such variations as circumstances require, and there-with shall be served a copy of the statement of claim, or if there is no statement of claim, then a copy of the writ of summons in the action. (E. 170.)

Order XVI.
rr. 50 -52.

50. If a person, not a party to the action, who is served as mentioned in the next preceding rule (herein-^(136.) after called the third party, desires to dispute the plain-^{Appearance by}-tiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party shall enter an appearance in the action within ten days from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice: Provided always, that a person so served and failing to appear within the said period of ten days may apply to the court or a judge for leave to appear, and such leave may be given upon such terms, if any, as the court or judge thinks fit. (E. 171.)

51. Where the third party makes default in entering an appearance in the action, if the defendant giving the notice suffers judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the court or a judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice: Provided that it shall be lawful for the court or a judge to set aside or vary such judgment upon such terms as seem just. (E. 172.)

52. Where a third party makes default in entering an appearance in the action, if the action is tried and results in favour of the plaintiff, the judge who tries the action may, at or after the trial, order such judgment as the nature of the case requires to be entered for the defendant giving the notice against the third party: Provided that execution shall not be issued thereon without

^(137.) Default by third party.
^(138.) Judgment against third party after trial.

Order XVI.
rr. 53-56.

leave of the judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the court or judge may, on application by notice of motion or summons, order such judgment as the nature of the case requires to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him. (E. 173.)

(139.)
Directions to
third party.

53. If a third party appears pursuant to the third party notice, the defendant giving the notice may apply to the court or a judge for directions, and the court or a judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the court or judge directs; and if not so satisfied may order such judgment as the nature of the case requires to be entered in favour of the defendant giving the notice against the third party. (E. 174.)

(140.)
Trial of liability
of third party.

54. The court or a judge upon the hearing of the application mentioned in the next preceding rule may, if it appears desirable to do so, give the third party liberty to defend the action, upon such terms as are just, or to appear at the trial and take such part therein as is just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the court or Judge appears proper, for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action. (E. 175.)

(141.)
Costs as to third
party.

55. The court or a judge may decide all questions of costs as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case requires. (E. 176.)

(142.)
Third party pro-
cedure between
defendants.

56. Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken

against such other defendant, if such last-mentioned Order XVI.
 defendant were a third party; but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action. (E. 177.)

ORDER XVII.

Order XVII.
rr. 1-4.

CHANGE OF PARTIES BY DEATH, ETC.

1. A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survives or continues, and shall not become defective by the assignment, creation or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death. (E. 178.)

(143.)
 No abatement
 by death, marriage, &c.

2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the court or a judge may, if it is deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the court or judge thinks just, and shall make such order for the disposal of the cause or matter as is just. (E. 179.)

(144.)
 Power to add parties.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved. (E. 180.)

(145.)
 Successor in title or estate to be new party.

4. Where by reason of marriage, death, bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and

(146.)
 Power to call in persons becoming interested.

Order XVII. — such new party or parties, may be obtained *ex parte* on application to the court or a judge, upon an allegation of such change, or transmission of interest or liability, or of such person interested having come into existence. (E. 181.)

(147.)
Order to be
served on such
continuing
parties.

5. An order obtained as in the next preceding rule mentioned shall, unless the court or judge otherwise directs, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application is himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter, shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons. (E. 182.)

(148.)
Varying order.

6. Where any person who is under no disability, or under no disability other than coverture, or being under any disability other than coverture, has a guardian *ad litem* in the cause or matter, is served with such order as in rule 4 mentioned, such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the service thereof. (E. 183.)

(149.)
Persons under
disability.

7. Where any person who is under any disability other than coverture, and has no guardian *ad litem* in the cause or matter, is served with any order as in rule 4 mentioned, such person may apply to the court or a judge to discharge or vary such order at any time within twelve days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days has expired such order shall have no force or effect as against such last mentioned person. (E. 184.)

(150.)
Defendant com-
pelling plaintiff
to proceed.

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as is ordered; and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue

as in the case provided for by order XL, rule 23. (E. 185.) **Order XVII.
rr. 9-10.**

9. Where any cause or matter becomes abated, or in case of any such change of interest as is by this Order provided for, the solicitor for the plaintiff, or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the Cause Book opposite to the name of such cause or matter. (E. 186.) (151.)
Certificate of
abatement.

10. Where any cause or matter has been standing for one year in the Cause Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause Book. (E. 187.) (152.)
Striking out
abated cause.

ORDER XVIII.

**Order XVIII.
rr. 1-2.**

JOINDER OF CAUSES OF ACTION.

1. Subject to the following rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appears to the court or a judge that any such causes of action cannot be conveniently tried or disposed of together, the court or judge may order separate trials of any of such causes of action to be had, or may make such other order as is necessary or expedient for the separate disposal thereof. (E. 188.) (153.)
Subject to order,
several causes of
action may be
joined.

2. No cause of action shall, unless by leave of the court or a judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof is held, or for any wrong or injury to the premises claimed. (154.)
Excepting in
actions for land.

Provided that nothing in this Order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such delivery of possession shall not be deemed an action for the recovery of land within the meaning of these rules. Joinder of claim
for possession
in action for
foreclosure or
redemption.

Order XVIII.
rr. 3-9.

Provided also, that in case any mortgage security is foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favor such foreclosure has taken place may by notice of motion or summons apply to the court or a judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case requires. (E. 189; E. R. S. C., Dec. 1885.)

(155.)
 And claims by
 trustees in
 bankruptcy.

3. Claims by a trustee in bankruptcy or insolvency as such, shall not, unless by leave of the court or a judge, be joined with any claim by him in any other capacity. (E. 190.)

(156.)
 By or against
 married persons

4. Claims by or against husband and wife may be joined with claims by or against either of them separately. (E. 191.)

(157.)
 Executors, &c.

5. Claims by or against an executor or administrator, as such, may be joined with claims by or against him personally: Provided the last-mentioned claims are alleged to arise with reference to the estate in respect to which the plaintiff or defendant sues or is sued as executor or administrator. (E. 192.)

(158.)
 By plaintiffs
 jointly and
 severally.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant. (E. 193.)

(159.)
 Proviso.

7. The next three preceding rules shall be subject to rules 1, 8, and 9 of this Order. (E. 194.)

(160.)
 Application to
 strike out.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the court or a judge for an order confining the action to such of the causes of action as may be conveniently disposed of together. (E. 195.)

(161.)
 Order to strike
 out pleadings.

9. If, on the hearing of such application as in the next preceding rule mentioned, it appears to the court or a judge that the causes of action are such as cannot all be conveniently disposed of together, the court or judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as is just. (E. 196.)

ORDER XVIII.A.

TRIAL WITHOUT PLEADINGS.

**Order
XVIII.A.
rr. 1 - 5.**

A plaintiff may without pleadings proceed to trial subject to the following rules:—

1. The indorsement of the writ of summons shall Indorsement.
contain a statement sufficient to give notice of the nature of his claim or of the relief or remedy required in the action, and shall state that if the defendant appears the plaintiff intends to proceed to trial without pleadings. (E. 196 a; E. R. S. C., Nov. 1893.)
2. Within ten days after appearance the plaintiff Notice of trial.
shall serve twenty-one days' notice of trial without pleadings. Such notice shall be in form No. 16 (A), appendix B., with such variations as circumstances require. (E. 196 b; E. R. S. C., Nov. 1893.)
3. The defendant may within ten days after appearance Defendant may apply for statement of claim.
apply by summons for the delivery of a statement of claim, and on such summons the judge may order (1) that a statement of claim shall be delivered, in which case the action shall proceed in the usual manner; or (2) that the action shall proceed to trial without pleadings, in which case it may be further ordered, if the judge thinks fit, that either party shall deliver particulars of his claim or defence. (E. 196 c; E. R. S. C., Nov. 1893.)
4. When the judge orders that the action shall pro- Particulars.
ceed to trial without pleadings, and makes no order as to particulars, all defences shall be open at the trial to the defendant. Where particulars are ordered to be delivered the parties shall be bound by such particulars, so far as regards the matters in respect to which the order for particulars was made. (E. 196 d; E. R. S. C., Nov. 1893.)
5. Where a defendant has not taken out a summons Special defences
under rule 3 of this Order, he shall not be allowed to rely on a set-off or counterclaim, or on the defence of infancy, coverture, fraud, or statute of limitations, unless he has given (within ten days after appearance) notice to the plaintiff, stating the grounds and particulars

**Order
XVIII.
r. 6.**

Pleadings not to
be required ex-
cept by order.

upon which he relies. (E. 196 e; E. R. S. C.,
Nov. 1893.)

6. When a plaintiff indorses the writ of summons with a statement that, if the defendant appears, he intends to proceed to trial without pleadings, no pleadings shall be required or delivered, except by order of the judge, made under rule 3 of this Order. (E. 196 f; E. R. S. C., Nov. 1893.)

**Order XIX.
rr. 1 3.**

ORDER XIX.

PLEADING GENERALLY.

(162.)
New rules of
pleading.

1. The following rules of pleading shall be used in the Supreme Court. (E. 197.)

(163.)
Statement of
claim.

2. The plaintiff shall, subject to the provisions of Order XX, and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Order XXI, and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counter-claim (if any), and the plaintiff shall, subject to the provisions of Order XXIII, and at such time and in such manner as therein prescribed, deliver his reply, if any, to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case admits, and the taxing authority in adjusting the costs of the action shall at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same. (E. 198.)

Defence.

Reply.

Costs of
prolixity.

(164.)
Set-off and
counter-claim.

3. A defendant in an action may set off, or set up by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sounds in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the court or a judge may, on application of the plaintiff before trial, if in the opinion of the court or judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof. (E. 199.)

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs numbered consecutively. Dates, sums, and numbers shall be expressed in figures and not in words. Pleadings shall be signed by the solicitor, or by the party if he sues or defends in person. (E. 200.)

Order XIX.

rr. 4-10.

(161.)
Pleading to be a
summary state-
ment.

To be signed.

5. The forms in appendices C, D, and E, when applicable, and where they are not applicable, forms of a like character, as near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be. (E. 201.)

(162.)
Forms.

6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading: Provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading. (E. 202.)

(167.)
Particulars in
certain cases.

7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms as to costs and otherwise as may be just. (E. 203.)

(168.)
Further and
better partic-
ulars.

8. The party at whose instance particulars have been delivered under a judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the particulars that he had at the time such order was made. Save as in this rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time. (E. 204.)

(169.)
Time after
particulars.

9. Every pleading may be either printed or written, or partly printed and partly written. (E. 205.)

(170.)
Written or
printed.

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered, in the manner now in use, to the solicitor of

(171.)
Service of
pleadings.

Order XIX.
rr. 11-16.

every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer. (E. 206.)

(172.)
Pleadings, how
marked.

11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the title of the action, and the description of the pleading. (E. 207.)

(173.)
Not guilty by
statute.

12. Nothing in these rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead, he shall not plead any other defence to the same cause of action without the leave of the court or a judge. (E. 208.)

(174.)
Tacit admis-
sions.

13. Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition or judicial decision. (E. 209.)

(175.)
Conditions pre-
cedent.

14. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading. (E. 210.)

(176.)
What facts must
be pleaded.

15. The defendant or plaintiff (as the case may be) shall raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as would be likely to take the opposite party by surprise if not raised, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitation, release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds. (E. 211.)

(177.)
No inconsistent
pleadings.

16. No pleading, not being a petition or summons, shall, except by way of amendment, raise any new grounds of claim, or contain any allegation of fact in-

consistent with the previous pleadings of the party pleading the same. (E. 212.)

**Order XIX.
rr. 17-22.**

17. It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages. (E. 213.)

(178.)
General denial
insufficient.

18. Subject to the next preceding rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any) subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party is willing to admit, and shall then operate as a denial of the facts not so admitted. (E. 214.)

(179.)
Joining issue.

19. Where a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he shall not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he shall deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances. (E. 215.)

(180.)
Answer to be
direct and full.

20. Where a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise. (E. 216.)

(181.)
Denial of contract.

Legality.

Statute of
Frauds.

21. Where the contents of any documents are material, it shall be sufficient in the pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material. (E. 217.)

(182.)
Effect of documents to be
stated.

22. Where it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of

(183.)
Allegation of
malice, &c

Order XIX. any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. (E. 218.)
rr. 23-28.

(184.)
 Allegation of notice.

23. Where it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material. (E. 219.)

(185.)
 Implied contract.

24. Where any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative. (E. 220.)

(186.)
 Presumed facts need not be stated.

25. Neither party need in any pleading allege any matter of fact which the law presumes in his favor or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e.g.*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.) (E. 221.)

(187.)
 No technical objections.

26. No technical objection shall be raised to any pleading on the ground of any alleged want of form. (E. 222.)

(188.)
 Amending and striking out pleadings.

27. The court or a judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous, or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he thinks fit, order the costs of the application to be paid as between solicitor and client. (E. 223.)

(189.)
 Filing necessary

28. Delivering a statement of claim or defence, or other pleading or proceeding, when mentioned or referred to in these Orders, includes filing, where by the practice of the court heretofore, or under these Orders, statements, pleadings, or proceedings of a like kind ought to be filed. (O. (1897), r. 267)

29. In any action for slanderous words spoken of any woman, imputing to her any unchaste conduct, it shall not be necessary to allege in pleading, or prove at the trial, that any special damage resulted to her from the utterance of such words; but she shall recover such damages as may be assessed, without such averment or proof of damage. (P. A. 184.)

Order XIX.
r. 29.

(190.)
Special damage need not be alleged in certain cases.

ORDER XX.

Order XX.
r. 1.

STATEMENT OF CLAIM.

1. The delivery of statements of claim shall be regulated as follows:—

(192.)
Delivery of claims.

(a.) Where the writ is specially indorsed under Order III, rule 5, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim:

Where writ specially indorsed.

(b.) Subject to the provisions of Order XIII, rule 13, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered:

Need not be delivered unless demanded.

(c.) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the court or a judge, deliver it within four weeks from the time of the plaintiff receiving such notice:

Time for delivery.

(d.) The plaintiff may (except as in (a.) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than five weeks after the appearance has been entered unless otherwise ordered by the court or a judge:

Statement of claim may be delivered.

Order XX.
rr. 2 6.

Costs of unnecessary statement of claim.

(e.) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the court or a judge may make such order as to the costs occasioned thereby as are just, if it appears that the delivery of a statement of claim was unnecessary or improper. (E. 225.)

(193.)
Amendment of indorsement unnecessary.

2. Where a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ. (E. 228.)

(194.)
Must show place of trial.

3. The statement of claim must in all cases show the proposed place of trial. (E. 229.)

(195.)
Claim for relief must be specific.

4. Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief, which may always be given, as the court or a judge may think just, to the same extent as if it had been asked for. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence. (E. 230.)

(196.)
Separate causes of complaint.

5. Where the plaintiff seeks relief in respect to several distinct claims or causes of complaint founded upon separate and distinct grounds they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts. (E. 231.)

(197.)
Account stated to be alleged, if it is cause of action.

6. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings. (E. 232.)

ORDER XXI.

Order XXI.
rr. 1-8.

DEFENCE AND COUNTER-CLAIM.

1. In actions for a debt or liquidated demand in money comprised in Order III, rule 5, a mere denial of the debt shall be inadmissible. (E. 234.) (198.)
Mere denial of debt inadmissible.
2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial shall deny some matter of fact; *e.g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonor of the bill or note. (E. 235.) (199.)
Defence in actions on bills and notes.
3. In actions comprised in order III, rule 5, classes (A) and (B), a defence in denial shall deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence shall deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it shall deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff. (E. 236.) (200.)
Defence in actions on other debts.
4. No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted. (E. 237.) (201.)
No denial of damage.
5. If either party wishes to deny the right of any other party to claim as executor, or as trustee, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically. (E. 238.) (202.)
Denial of representative capacity.
6. Where a statement of claim is delivered to a defendant he shall deliver his defence within ten days from the delivery of the statement of claim, or from the time limited for appearance, whichever is last, unless such time is extended by the court or a judge. (E. 239.) (203.)
Time for delivery of defence where claim delivered.
7. A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, shall deliver his defence (if any) at any time within ten days after the expiration of the time limited for his appearance, unless such time is extended by the court or a judge. (E. 240.) (204.)
Time for delivery, if no statement of claim.
8. Where leave has been given to a defendant to defend under order XIV, he shall deliver his defence (if any) within such time as shall be limited by the order (205.)
Where leave to defend is given.

Order XXI. giving him leave to defend, or if no time is thereby limited, then within eight days after the order. (E. 241.)
rr. 9-15.

(206.)
 Improper denial. Costs.

9. Where the court or a judge is of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the court or judge may make such order as is just with respect to any extra costs occasioned by their having been denied or not admitted. (E. 242.)

(207.)
 Specific statement of counter-claim.

10. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his statement of defence, state specifically that he does so by way of counter-claim. (E. 243.)

(208.)
 Counter-claim which includes a third party

11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff. (E. 244.)

(209.)
 How such party summoned.

12. Where any such person as in the next preceding rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence and counter-claim, and such service shall be regulated by the same rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the form No. 2, in appendix B, or to the like effect. (E. 245.)

(210.)
 Such party must appear.

13. Any person not a party to the action, who is served with a defence and counter-claim as aforesaid, shall appear thereto as if he had been served with a writ of summons to appear in an action. (E. 246.)

(211.)
 Reply to counter-claim.

14. Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim. (E. 247.)

(212.)
 Excluding counter-claim.

15. Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the court or a judge for an order that such counter-claim may be excluded,

and the court or a judge may, on the hearing of such application, make such order as is just. (E. 248.)

**Order XXI.
rr. 16--20.**

16. If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with. (E. 249.)

(213.)
Counter-claim
not stayed by
discontinuance.

17. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the court or a judge may, if the balance is in favor of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case. (E. 250.)

(214.)
Judgment for
balance of coun-
ter claim.

18. In every case in which a party pleads the general issue, intending to give the special matter in evidence by virtue of any statute, he shall insert in the margin of his pleading the words "by statute," together with the year of our Lord in which the statute on which he relies was passed, and also the chapter and section of such statute, and shall specify whether such statute is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any statute. (E. 252.)

(215.)
General issue by
statute, how
pleaded.

19. No plea or defence shall be pleaded in abatement. (E. 253.)

(216.)
Pleas in abate-
ment abolished.

20. No defendant in an action for the recovery of land who is in possession by himself or his tenant, shall be required to plead his title, unless his defence depends on an equitable estate or right, or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state, by way of defence, that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove, except as hereinbefore mentioned. (E. 254.)

(217.)
Title need not be
pleaded in
action for land.

Order XXII.**rr. 1-6.****ORDER XXII.**

PAYMENT INTO AND OUT OF COURT AND TENDER

(218.)
Payment into
court with
denial of
liability.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the court or a judge, pay into court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect to which the payment is made; or he may, with a defence denying liability, (except in actions or counter-claims for libel or slander) pay money into court, which shall be subject to the provisions of rule 6. (E. 255.)

(219.)
To be signified
in defence.

2. Payment into court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein. (E. 256.)

(220.)
Tender.

3. With a defence setting up a tender before action, the sum of money alleged to have been tendered shall be brought into court. (E. 257.)

(221.)
Notice of, he
fore delivery of
defence.

4. If the defendant pays money into court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect to which such payment is made. Such notice shall be in the form No. 3, in appendix B, with such variations as circumstances require. (E. 258.)

(222.)
When to be paid
to plaintiff.

5. In the following cases of payment into court under this order, viz:—

(a.) When payment into court is made before delivery of the defence:

(b.) When the liability of the defendant, in respect to the claim or cause of action in satisfaction of which the payment into court is made, is not denied in the defence:

(c.) When payment into court is made with a defence setting up a tender of the sum paid:

the money paid into court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the court or a judge otherwise orders. (E. 259.)

(223.)
With defence
denying lia-
bility.

6. When the liability of the defendant, in respect to the claim or cause of action in satisfaction of which the payment into court has been made, is denied in the defence, the following rules shall apply:—

- (a.) The plaintiff may accept, in satisfaction of the claim or cause of action in respect to which the payment into court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as hereinafter provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect to such claim or cause of action, except as to costs, shall be stayed; or the plaintiff may refuse to accept the money in satisfaction, and reply accordingly, in which case the money shall remain in court subject to the provisions hereinafter mentioned:
- (b.) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the form No. 4, in appendix B, as in rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the court or a judge otherwise orders:
- (c.) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect to which the payment into court has been made, the sum so paid in, but proceeds with the action in respect to such claim or cause of action, or any part thereof, the money shall remain in court and be subject to the order of the court or a judge, and shall not be paid out of court except in pursuance of an order. If the plaintiff proceeds with the action in respect to such claim or cause of action, or any part thereof, and recovers less than the amount paid into court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect to such claim or cause of action, the whole amount shall, under such order, be repaid to him. (E. 260.)

7. The plaintiff, when payment into court is made before delivery of defence, may within four days after the receipt of notice of such payment, or when such payment is first signified in a defence, may before reply, ac-

Order XVII.
P. 7.
 Plaintiff accept-
 ing or refusing.

(221.)
 Acceptance and
 satisfaction.

Order XXII.
rr. 8-13.

cept in satisfaction of the claim or cause of action in respect to which such payment has been made the sum so paid in, in which case he shall give notice to the defendant in the form No. 4, in appendix B, and shall be at liberty, in case the entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of four days from the service of such notice, unless the court or a judge otherwise orders, and in case of non-payment of the costs within forty-eight hours after such taxation, to sign judgment for his costs so taxed. (E. 261.)

(225.)
 In consolidated
 actions.

8. Where money is paid into court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried. (E. 262.)

(226.)
 Plaintiff may
 pay in money on
 counter-claim.

9. A plaintiff may, in answer to a counter-claim, pay money into court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into court by a defendant. (E. 263.)

(227.)
 How appropri-
 ated.

10. Money paid into court under an order of the court or a judge, shall not be paid out of court except in pursuance of an order of the court or a judge: Provided that, where before the delivery of defence money has been paid into court by the defendant pursuant to an order under the provisions of order XIV, he may (unless the court or a judge otherwise orders) by his pleading appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into court pursuant to the preceding rules of this order relating to money paid into court, and shall be subject in all respects thereto. (E. 265.)

(228.)
 Rules.

Appendix M.

11. The manner of payment into and out of court, and the manner in which the money in court shall be dealt with, shall be subject to the regulations contained in appendix M. (E. 267.)

(229.)
 Money paid in
 previous to
 Rules.

12. All money standing in court on the day on which these rules come into operation, shall thereupon be subject in all respects to the provisions of this order. (E. 268.)

(230.)
 Money of per-
 sons under
 disability.

13. In any cause or matter in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition or judicial

decision, the court or a judge may at or after the trial order that the whole or any part of such sum shall be paid into court to the credit of an account intituled in the cause or matter; and any sum so paid into court, and any dividend or interest thereon, shall be subject to such orders as are from time to time made by the court or a judge concerning the same, and may either be invested, or be paid out of court, or transferred to such persons, to be held and applied upon and for such trusts and in such manner, as the court or judge directs. (E. 269.)

Order XXII.
rr. 14-17.

14. Money paid into court or securities purchased under the provisions of the next preceding rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the court or a judge. (E. 270.)

(231.)
Subject to con-
trol of court,
&c.

15. Money under the control of or subject to the order of the court may be invested in Dominion or provincial securities, and upon mortgage of freehold estates. (E. 271.)

(232.)
How invested.

16. Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorized by the next preceding rule, shall be served upon such persons, if any, as the court or judge thinks fit. (E. 272.)

(233.)
Application to
convert stocks,
&c.

17. Where a cause or matter is tried by a judge with a jury no communication to the jury shall be made until after the verdict is given, either of the fact that money has been paid into court, or of the amount paid in. The jury shall be required to find the amount of the debt or damages, as the case may be, without reference to any payment into court. (E. Or. 22; r. 22, E. R. S. C., Nov. 1893, r. 9.)

(233a.)
Payment not to
be communi-
cated to jury.

ORDER XXIII.

Order XXIII.
rr. 1-2.

REPLY AND SUBSEQUENT PLEADINGS.

1. A plaintiff shall deliver his reply, if any, within twenty-one days after the defence or the last of the defences has been delivered, unless the time is extended by the court or a judge. (E. 276.)

(234.)
Reply, when
made.

2. No pleading subsequent to reply, other than a joinder of issue, shall be pleaded without leave of the court or a judge, and then shall be pleaded only upon such terms as the court or judge thinks fit. (E. 277.)

(235.)
Subsequent
pleadings, leave
for.

Order XXIII.**rr. 3-6.**

(236.)
Time for de-
livery.

3. Subject to the next preceding rule, every pleading subsequent to reply shall be delivered within four days after the delivery of the previous pleading, unless the time is extended by the court or a judge. (E. 278.)

(237.)
Reply to
counter-claim.

4. Where a counter-claim is pleaded, a reply thereto shall be subject to the rules applicable to statements of defence. (E. 279.)

(238.)
Close of plead-
ings.

5. As soon as any party has joined issue upon the preceding pleading of the opposite party, simply, without adding any further or other pleading thereto, or has made default as mentioned in order XXVII, rule 12, the pleadings as between such parties shall be deemed to be closed. (E. 280.)

(239.)
New assign-
ment, abolished.

6. No new assignment shall be necessary or used. But everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment without leave of the statement of claim, or by way of reply. (E. 281.)

Order XXIV.**rr. 1-2.****ORDER XXIV.**

MATTERS ARISING PENDING THE ACTION.

(240.)
Matters arising
after action may
be pleaded.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply. (E. 282.)

(241.)
Arising after
pleadings, may
be used.

2. Where any ground of defence arises after the defendant has delivered his statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply has expired, the plaintiff may, within eight days after such ground of defence has arisen, or at any subsequent time by leave of the court or a judge, deliver a further defence or further reply, as the case may be, setting forth the same. (E. 283.)

3. Where any defendant, in his statement of defence, or in any further statement of defence as in the next preceding rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the form No. 5 in appendix B, with such variations as circumstances require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the court or a judge, either before or after the delivery of such confession, otherwise orders. (E. 284.)

Order XXIV.

r. 3.

(242.)
Confession of
defence.

Costs.

ORDER XXV.

Order XXV.

rr. 5-8.

PROCEEDINGS IN LIEU OF DEMURRER AND FALSE PLEADINGS.

1. No demurrer shall be allowed. (E. 285.)

(243.)

No demurrer.

2. Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the judge who tries the cause at or after the trial: Provided that by consent of the parties, or by order of the court or a judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial. (E. 286.)

(244.)

Point of law,
how raised.

3. If, in the opinion of the court or a judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or reply therein, the court or judge may thereupon dismiss the action or make such other order therein as is just. (E. 287.)

(245.)

Proceeding
thereon.

4. The court or a judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the court or a judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as is just. (E. 288.)

(246.)

Striking out bad
pleading.

5. No action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether any consequential relief is or could be claimed or not. (E. 289.)

(247.)

Declaration of
right may be
sought.

5A. Statements of defence or other pleadings which are false, frivolous or vexatious, may on affidavit be set aside, in whole or in part, on such terms as to costs or otherwise as the court or judge thinks fit. (S. C. R., May 5th, 1885, (2.)

(247a.)

False pleadings,
set aside.

Order XXVI
rr. 1-4.

ORDER XXVI.

DISCONTINUANCE.

- (248.)
Discontinuance. 1. The plaintiff may at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants, or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action is not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the court or a judge, but the court or a judge may before, or at, or after, the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as are just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The court or a judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or counter-claim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave. (E. 290.)
- Costs. (249.)
Withdrawal of record. (250.)
Striking out defence. (251.)
Subsequent action. 2. When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties. (E. 291.)
3. Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action is not wholly discontinued, if such respective costs are not paid within two days after taxation. (E. 292.)
4. If any subsequent action is brought before payment of the costs of a discontinued action, for the same or substantially the same cause of action, the court or a judge may, if they or he think fit, order a stay of such subsequent action, until such costs have been paid. (E. 293.)

ORDER XXVII.

Order XXVII.
FF. 1-5.

DEFAULT OF PLEADING.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the court or a judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the court or judge may, if no statement of claim has been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the court or judge thinks just. (E. 294.) (252.)
Plaintiff in default, action may be dismissed.
2. If the plaintiff's claim is only for a debt or liquidated demand, and the defendant does not within the time allowed for that purpose deliver a defence, the plaintiff may at the expiration of such time enter final judgment for the amount claimed, with costs. (E. 295.) (253.)
Defendant in default, plaintiff may enter judgment.
3. When in any such action as in the next preceding rule mentioned there are several defendants, if one of them makes default, as mentioned in the next preceding rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants. (E. 296.) (254.)
Default by one of several defendants.
4. If the plaintiff's claim is for detention of goods and pecuniary damages, or either of them, and the defendant, or all the defendants, if more than one, make default as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be. But the court or a judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the court or a judge directs. (E. 297.) (255.)
In actions for detention of goods.
5. When in any such action as in rule 4 mentioned there are several defendants, if one or more of them make default, as mentioned in rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, so making default, and proceed with his action against the others. And in such case the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues therein against the other defendants, unless the court or a judge otherwise directs. (E. 298.) (256.)
Default by some defendants in action for detention.

Order XXVII.**rr. 6—9a.**

(257.)
In actions for
detention and
money demand.

6. If the plaintiff's claim is for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant makes default as mentioned in rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in rules 4 and 5. (E. 299.)

(258.)
Action for land.

7. In an action for the recovery of land, if the defendant makes default as mentioned in rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs. (E. 300.)

(259.)
Action for land
and damages.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, in respect to the premises claimed or any part of them, or damages for breach of contract, or wrong, or injury to the premises claimed, upon a writ for recovery of land, if the defendant makes default as mentioned in rule 2, or if there is more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in rules 4 and 5. (E. 301; E. R. S. C., Dec. 1885.)

(260.)
Defence as to
part.

9. If the plaintiff's claim is for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may by leave of the court or a judge enter judgment, final or interlocutory, as the case may be, for the part unanswered: Provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand: Provided also that, where there is a counter-claim, execution on any such judgment as above mentioned in respect to the plaintiff's claim shall not issue without leave of the court or a judge. (E. 302.)

Default in fore-
closure actions.

9A. If the action is for the foreclosure of a mortgage or the foreclosure and sale of mortgaged premises, and the defendant does not within the time allowed for that purpose deliver a defence, the plaintiff may at the expiration of such time proceed as if the defendant had not appeared.

10. In all other actions than those in the preceding rules of this Order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the court or a judge considers the plaintiff to be entitled to. (E. 304.)

Order XXVII.
rr. 10-14.
(261)
Other actions.

11. Where, in any such action as mentioned in the next preceding rule, there are several defendants, then, if one of such defendants makes such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial, or set down on motion for judgment against the other defendants. (E. 305.)

(262.)
Default by one of several defendants.

12. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue. (E. 306.)

(263.)
Default in reply or subsequent pleadings.

13. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the court or a judge for such judgment, if any, as upon the pleadings he appears to be entitled to. And the court or judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties. (E. 307.)

(264.)
Remedy of third party.

14. Any judgment by default, whether under this Order or under any other of these rules, may be set aside by the court or a judge, upon such terms as to costs or otherwise as such court or judge thinks fit. (E. 308.)

(265.)
Setting aside judgment by default.

**Order
XXVIII.
rr. 1-6.**

ORDER XXVIII.

AMENDMENT.

(266.)
Amendment of
indorsement and
pleadings.

1. The court or a judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement, or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. (E. 309.)

(267.)
Amendment by
plaintiff without
leave.

2. The plaintiff may, without any leave, amend his statement of claim, whether endorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who has last appeared. (E. 310.)

(268.)
Amendment by
defendant with-
out leave.

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer, or in case there is no reply, then at any time before the expiration of twenty-eight days from defence. (E. 311.)

(269.)
Disallowance of
amendment.

4. Where any party has amended his pleading under either of the next two preceding rules, the opposite party may, within eight days after the delivery to him of the amended pleading, apply to the court or a judge to disallow the amendment, or any part thereof, and the court or judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as are just. (E. 312.)

(270.)
Pleading after
amendment.

5. Where any party has amended his pleading under rules 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. (E. 313.)

(271.)
Application for
leave to amend.

6. In all cases not provided for by the preceding rules of this Order, application for leave to amend may be made by either party to the court or a judge, or to the judge at the trial of the action, and such amendment may

be allowed upon such terms as to costs or otherwise as are just. (E. 314.)

**Order
XXVIII.
rr. 7-14.**

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the court or a judge. (E. 315.)

(272.)
Time limited for
amendment.

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary. (E. 316.)

(273.)
Amendment,
how made.

9. Where any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz: "Amended day of pursuant to order of dated the day of ." E. (317.)

(274.)
Marking amend-
ed pleading.

10. Where any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same. (E. 318.)

(275.)
Delivery of
amended plead-
ings.

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the court or a judge on motion or summons without an appeal. (E. 319.)

(276.)
Clerical errors.

12. The court or a judge may at any time, and on such terms as to costs or otherwise as the court or judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings. (E. 320.)

(277.)
General power
of amendment.

13. The costs of and occasioned by any amendment made pursuant to rules 2 and 3 of this Order shall be borne by the party making the same, unless the court or a judge otherwise orders. (E. 321.)

(278.)
Costs.

14. In appeals brought before it, the court shall have all the powers and duties in reference to the amendment of proceedings which the court has in causes originating therein. (1882, c. 2, r. 8.)

(279.)
Amendment by
Court of
Appeal.

Order XXIX.

rr. 1-3.

ORDER XXIX.

SUMMONS FOR DIRECTIONS.

(280.)
Summons for
directions.

1. (a.) Subject as hereinafter mentioned, in every action a summons for directions may be taken out by the plaintiff, returnable in not less than four days.
- (b.) Such summons shall be taken out after appearance and before the plaintiff takes any fresh step in the action other than application for an injunction, or for a receiver, or for summary judgment under Order XIV, or to enter judgment in default of defence under Order XXVII, rule 2.
- (c.) The summons shall be in the form No. 3, appendix K, with such variations as circumstances require, and shall be addressed to and served upon all such parties to the action as may be affected thereby.
- (d.) This rule shall not apply to actions coming under the provisions of Order XVIII, A, or to proceedings commenced by originating summons.
- (e.) Where, under Order XVIII, A, the defendant applies for a statement of claim, the judge may deal with such application as if the plaintiff had been entitled to take out and had taken out a summons for directions. (E. 340; E. R. S. C., May 1897, r. 1; E. R. S. C., Aug. 1897.)

(281.)
Interlocutory
proceedings.

2. Upon the hearing of the summons the court or a judge shall, so far as practicable, make such order as is just with respect to all the interlocutory proceedings to be taken in the action before the trial, and as to the costs thereof, and more particularly with respect to the following matters: Pleading, particulars, admissions, discovery, interrogatories, inspection of documents, inspection of real or personal property, commissions, examination of witnesses, place and mode of trial. Such order shall be in the form No. 4, appendix K, with such variations as circumstances require. (E. Or. 30, r. 2; E. R. S. C., Nov. 1893.)

(282.)
No affidavit to
be made.

3. No affidavit shall be made or used on the hearing of the said summons except by special order of the court or a judge. (E. Or. 30, r. 3; E. R. S. C., Nov. 1893.)

4. On the hearing of the summons any party to whom the summons is addressed shall, so far as practicable, apply for any order or directions as to any interlocutory matter or thing in the action which he may desire. (E. Or. 30, r. 4; E. R. S. C., Nov. 1893.)

Order XXIX.
rr. 4-7.
(282c.)
Parties to apply
for directions.

5. Any application subsequently to the original summons for any directions as to any interlocutory matter or thing by any party shall be made under the summons by two clear days' notice to the other party, stating the grounds of the application. (E. Or. 30, r. 5; E. R. S. C., Nov. 1893.)

(282b.)
Subsequent ap-
plications.

6. Any application by any party which might have been made at the hearing of the original summons shall, if granted on any subsequent application, be granted at the costs of the party applying, unless the court or a judge is of opinion that the application could not properly have been made at the hearing of the original summons. (E. Or. 30, r. 6; E. R. S. C., Nov. 1893.)

(282c.)
Costs of subse-
quent applica-
tions.

7. On the hearing of the summons, the court or a judge may order that evidence of any particular fact, to be specified in the order, shall be given by statement on oath of information and belief, or by production of documents or entries in books, or by copies of documents or entries, or otherwise as the court or judge may direct. (E. Or. 30, r. 7; E. R. S. C., Aug. 1894, r. 1.)

(282d.)
Evidence.

ORDER XXX.

Order XXX.
rr. 1-2.

DISCOVERY AND INSPECTION.

1. In any cause or matter the plaintiff or defendant by leave of the court or a judge may deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories, when delivered, shall have a note at the foot thereof, stating which of such interrogatories each of such parties is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness. (E. 343; E. R. S. C., Nov. 1893, r. 12.)

(283.)
Interrogatories.

Further inter-
rogatories

Where irrele-
vant.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be

(284.)
Particular in-
terrogatories to
be submitted.

Order XXX.
rr. 3-9.

delivered shall be submitted to the court or judge. In deciding upon such application, the court or judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the court or judge shall consider necessary either for disposing fairly of the cause or matter or for saving costs. (E. 344; E. R. S. C., Nov. 1893, r. 13.)

(285.)
Costs.

3. In adjusting the costs of the cause or matter, inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing authority or of the court or judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault. (E. 345.)

(286.)
Form of inter-
rogatories.

4. Interrogatories shall be in the form No. 6 in appendix B, with such variations as circumstances require. (E. 346.)

(287.)
Corporations
and other
bodies.

5. If any party to a cause or matter is a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or to be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly. (E. 347.)

(288.)
Objections to
interrogatories.

6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bona fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer. (E. 348.)

* * * * *

(290.)
Time for
answering.

8. Interrogatories shall be answered by affidavit, to be filed within ten days, or within such other time as a judge allows. (E. 350.)

(291.)
Affidavit in
answer.

9. An affidavit in answer to interrogatories shall be in the form No 7, in appendix B, with such variations as circumstances require. (E. 351.)

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the court or a judge on motion or summons. (E. 352.)

**Order XXX.
Pt. 10-15.**

(292.)
Exceptions to
affidavit.

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the court or a judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the judge directs. (E. 353.)

(293.)
Insufficient
answers.

12. Any party may, without any affidavit, apply to the court or a judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the court or judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may in their or his discretion be thought fit: Provided that discovery shall not be ordered when and so far as the court or judge shall be of opinion that it is not necessary either for disposing of the cause or matter, or for saving costs. (E. 354; E. R. S. C., Nov. 1893, r. 13.)

(294.)
Discovery of
documents.

13. The affidavit, to be made by a party against whom such order as is mentioned in the next preceding rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the form No. 8, in appendix B, with such variations as circumstances require. (E. 355.)

(295.)
Affidavit of dis-
covery.

14. It shall be lawful for the court or a judge, at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the court or judge thinks right; and the court may deal with such documents, when produced, in such manner as appears just. (E. 356.)

(296.)
Production of
documents by
order.

15. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his

(297.)
Notice to pro-
duce documents
referred to in
pleadings or
affidavits.

Order XXX.
rr. 16-18.
 Effect of non-compliance.

solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards put any such document in evidence on his behalf in such cause or matter, unless he satisfies the court or a judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the court or judge deems sufficient for not complying with such notice; in which case the court or judge may allow the same to be put in evidence on such terms as to costs and otherwise as the court or judge thinks fit. (E. 357.)

(298.)
 Form of notice.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in the form No 9, in appendix B, with such variations as circumstances require. (E. 358.)

(299.)
 Production on notice.

17. The party to whom such notice is given shall, within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of banker's books or other books of account, or books in constant use for the purpose of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the form No. 10 in appendix B, with such variations as circumstances require. (E. 359.)

Banker's books,
 &c.

(300.)
 Order for inspection.

18. (1.) If the party served with notice under the next preceding rule omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the court or judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he thinks fit: Provided that the order shall not be made when and so far as the court or a judge is of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs.

(2.) Any application to inspect documents, except such as are referred to in the pleadings, particulars, or affidavits of the party against whom the application is

made, or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The court or judge shall not make such order for inspection of such documents when and so far as the court or judge is of opinion that it is not necessary either for disposing fairly of the cause or matter or for saving costs. (E. 360; E. R. S. C., Nov., 1893, r. 14.)

Order XXX.
rr. 18a-19.

18a. (1.) Where inspection of any business books is applied for, the court or a judge may, if they or he think fit, instead of ordering inspection of the original books, order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations, or alterations: Provided that, notwithstanding that such copy has been supplied, the court or a judge may order inspection of the book from which the copy was made. ^(300a.) Verified copies.

(2.) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the court or a judge to inspect the document for the purpose of deciding as to the validity of the claim of privilege. ^{Where privilege claimed judge may inspect.}

(3.) The court or a judge may, on the application of any party to a cause or matter at any time, and whether an affidavit of documents has or has not already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been in his possession or power; and, if not then in his possession, when he parted with the same, and what has become thereof. Such applications shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the cause or matter, or to some of them. (E. Or. 31, r. 19a; E. R. S. C., Nov., 1893, r. 15.) ^{Further application for specific documents.}

19. If the party from whom discovery or inspection is sought objects to the same, or any part thereof, the court or a judge may, if satisfied that the right to the discovery or inspection sought depends on the determina- ^(301.) Decision of question on which right to discovery depends.

Order XXX.
rr. 20—24.

tion of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be determined first, and reserve the question as to the discovery or inspection. (E. 362.)

(302.)
Consequence of
disobedience.

20. If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also if a plaintiff be liable to have his action dismissed for want of prosecution, and if a defendant to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the court or a judge for an order to that effect, and an order may be made accordingly. (E. 363.)

(303.)
Application for
attachment.

21. Service of an order for interrogatories or discovery or inspection on the solicitor of the party against whom the order is made shall be sufficient service upon which to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order. (E. 364.)

(304.)
Attachment of
solicitor.

22. A solicitor upon whom an order against any party for interrogatories or discovery or inspection is served under the next preceding rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment. (E. 365.)

(305.)
Answers to be
evidence.

23. Any party, may, at the trial of a cause, matter or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories, without putting in the others or the whole of such answer: Provided always, that in such case the judge may look at the whole of the answers, and if he is of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in. (E. 366.)

(306.)
Costs.

24. In every cause, or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the court or a judge, be secured in the first instance as provided by rule 25 of this order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery

appears to the judge at the trial, or, if there is no trial, to the court or a judge, or appears to the taxing authority, to have been reasonably asked for. (E. 367.)

Order XXX.
rr. 25—27.

25. Any party seeking discovery by interrogatories shall, before delivery of interrogatories, pay into court to a separate account in the action, to be called "Security for Costs Account," to abide further orders, the sum of \$20, and, if the number of folios exceeds five, the further sum of \$1, for every additional folio. Any party seeking discovery otherwise than by interrogatories shall, before making application for discovery, pay into court, to a like account, to abide further order, the sum of \$20, and may be ordered further to pay into court as aforesaid, such additional sum as the court or a judge directs. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment into court, and the time for answering or making discovery shall in all cases commence from the date of such service. The party from whom discovery is sought shall not be required to answer or make discovery unless and until the said payment has been made. (E. 368.)

(307.)
Deposit for costs.

Receipt.

26. Unless the court or a judge at or before the trial otherwise orders, the amount standing to the credit of the "Security for Costs Account" in any cause or matter, shall, after the cause or matter has been finally disposed of, be paid out to the party by whom the same was paid in, on his request, or to his solicitor on such party's written authority, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the court or judge ordering him to pay the costs of the cause or matter, the amount in court shall be subject to a lien for the costs ordered to be paid to any other party. (E. 369.)

(308.)
Disposal of deposit.

26a. If after a cause or matter has been finally disposed of, by consent or otherwise, no taxation of costs is required, the judge may, either by consent of the parties, or on being satisfied that any party who has lodged any money as security for costs in such cause or matter has become entitled to have the same paid out to him, give an order to that effect. (E. 369A.)

(308a.)
Order for payment out, of money lodged to "Security for Costs Account."

27. In any action against or by a sheriff in respect to any matters connected with the execution of his office, the court or a judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery, shall be

(309.)
Discovery by Sheriff's officer

Order XXX. made by the officer or person actually concerned. (E. rr. 28-31. 370.)

(310.)
Affidavit by
officer, &c., of
corporation.

28. Where the party required to produce documents is a corporation aggregate, the affidavit shall be made by one of the officers of the corporation. (O. (1897), r. 468, part.)

(311.)
Cross-examina-
tion of deponent

29. The deponent in any affidavit provided for in the next preceding rule shall be subject to cross-examination, and his affidavit shall have the same effect, as nearly as may be, as the affidavit of a party, unless where the court or judge sees reason for holding otherwise. (O. (1888), r. 512.)

(312.)
Former officers
examined.

30. Persons who have ceased to be officers of a corporation may be examined in the same manner as existing officers. (O. (1897), r. 439, part.)

(313.)
Order to apply
to infants.

31. This order shall apply to infant plaintiffs and defendants, and to their next friends and guardians *ad litem*. (E. Or. 31, r. 29, E. R. S. C., Nov. 1893, r. 16.)

Order XXXI.
rr. 1-4.

ORDER XXXI.

ADMISSIONS.

(313.)
Admission of
opponent's
statement.

1. Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party. (E. 371.)

(314.)
Notice to admit
documents.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the court or a judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the taxing authority, a saving of expense. (E. 372.)

(315.)
Form of notice.

3. A notice to admit documents shall be in the form No. 11 in appendix B, with such variations as circumstances require. (E. 373.)

(316.)
Notice to admit
facts.

4. Any party may, by notice in writing, at any time not later than seven days before the day for which notice of trial has been given, call on any other party to admit for the purposes of the cause, matter, or issue only, any

specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the court or a judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the court or a judge certifies that the refusal to admit was reasonable, or unless the court or a judge at any time otherwise orders or directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion, or in favor of any person other than the party giving the notice: Provided also that the court or a judge may at any time allow any party to amend or withdraw any admission so made on such terms as are just. (E. 374.)

Order XXXI.
rr. 5-9.

5. A notice to admit facts shall be in the form No. 12, in appendix B, and admissions of facts shall be in the form No. 13, in appendix B, with such variations as circumstances require. (E. 375.)

(317.)
Forms of notice
and admissions.

6. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court or a judge for such judgment or order as upon such admissions he is entitled to, without waiting for the determination of any other question between the parties; and the court or a judge may upon such application make such order, or give such judgment, as the court or judge thinks just. (E. 376.)

(318.)
Judgment on
admissions.

7. An affidavit of the solicitor or his clerk of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required. (E. 377.)

(319.)
Proof of signa-
tures.

8. Notice to produce documents shall be in the form No. 14, in appendix B, with such variations as circumstances require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served. (E. 378.)

(320.)
Form of notice
to produce.

9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned

(321.)
Unnecessary
costs.

Order XXXI. thereby shall be borne by the party giving such notice.
(E. 379.)

Order XXXII.
rr. 1-2.

ORDER XXXII.

ISSUES, INQUIRIES, AND ACCOUNTS.

(322.)
Issues to be
settled if
necessary.

1. Where in any cause or matter it appears to the court or a judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the court or a judge. (E. 380.)

(322a.)
Findings of
judge upon
issues.

1A. In all cases tried before a judge sitting without a jury, the judge shall write out and attach to the copy of the pleadings his findings upon each of the issues for trial. (1886, c. 50, s. 9.)

(322b.)
Settlement of
issues.

1B. Such issues, if not agreed upon by the parties, shall be settled by a judge, before the trial, and a copy of the same shall be attached to the copy of the pleadings delivered to the proper officer for the use of the judge at the trial. Such copy of issues shall be written on one side of the paper, with a space left blank below each issue sufficient to contain the decision of the judge on that issue. Unless the issues are so agreed upon or settled, and a copy delivered for the use of the judge, the judge who tries the cause may decide on those issues which he considers material. (S. C. R., March 28th, 1887, r. 5.)

(323.)
When inquiries
or accounts
taken.

2. The court or a judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it appears that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner. (E. 381.)

(324.)
Accounts, how
taken.

3. The court or a judge may, either by the judgment or order directing an account to be taken, or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking the account, the books of account in which the accounts in question have been kept, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they are advised. (E. 382.)

4. Where any account is directed to be taken, the accounting party, unless the court or a judge otherwise directs, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit, and be filed with the proper officer. (E. 383.)

Order XXXII.
rr. 4-9.
(325.)
Verification of
account by
affidavit.

4A. Upon the taking of any account the court or a judge may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as are contested or surcharged shall be brought before the referee or other person taking the account. (E. 383 a, E. R. S. C., Dec. 1885, r. 8.)

(325a.)
Mode of vouch-
ing accounts.

5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner. (E. 384.)

(326.)
Notice of claim
beyond admis-
sion.

6. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the court or a judge otherwise directs. (E. 385.)

(327.)
Outstanding
estate to be
inquired of.

7. Where, by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as may be, each distinct account and inquiry may be designated by a number, and such judgment or order shall be in the form No. 24, in appendix L, with such variations as the circumstances of the case require. (E. 386.)

(328.)
Directions to be
numbered.

8. In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose. (E. 387.)

(329.)
Allowances to
be made.

9. If it appears to the court or a judge that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the court or a judge may require the party having the conduct of the proceedings under any judgment or order, or any other party, to explain the delay, and may thereupon make such order in respect to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings,

(330.)
Expediting ac-
counts or in-
quiries.

Order XXXII. as the circumstances of the case require; and for the purposes aforesaid, any party may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which are given; and any costs of such party, so directed, shall be paid by such parties or out of such funds as the court or judge directs; and if any such costs are not otherwise paid, the same shall be paid out of such moneys (if any) as are provided by the legislature. (E. 388.)

(331.)
Substituted
referee.

10. In the event of a referee declining to act, or dying or becoming disqualified before he has made his report, the parties may, or if they cannot agree a judge may, on application of either party, appoint a new referee. (O. 1897, r. 648, (3).)

**Order
XXXIII.
rr. 1-2.**

ORDER XXXIII.

1.—SPECIAL CASE.

(332.)
Parties may
state special
case.

1. The parties to any cause or matter, at any stage of the cause or matter, or without any previous proceedings having been instituted, may concur in stating the questions of law arising therein in the form of a special case for the opinion of the court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as are necessary to enable the court to decide the questions raised thereby. Upon the argument of such case the court and the parties shall be at liberty to refer to the whole contents of such documents, and the court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial. (E. 389, P. A. 225.)

Documents.

Inference of
fact.

(333.)
Preliminary
question of law.

2. If it appears to the court or a judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the court or judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the court, either by special case or in any such other manner as the court or judge deems expedient, and all such further proceedings as the decision of such question of law renders unnecessary may thereupon be stayed, (E. 390.)

Special case
without consent.

3. Every special case shall be printed by the plaintiff and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Printed copies for the use of the judges shall be delivered by the plaintiff. (E. 391.)

Order
XXXXIII.
rr. 3-8.

(334.)
Printing case.

4. No special case in any cause or matter to which a married woman (not being a party thereto in respect to her separate property or of any separate right of action by or against her), infant, or person of unsound mind not so found by inquisition or judicial declaration is a party, shall be set down for argument without leave of the court or a judge, the application for which shall be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true. (E. 392.)

(335.)
Persons under disability.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry in the usual form, and also, if any married woman, infant, or person of unsound mind not so found by inquisition or judicial declaration is a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument. (E. 393.)

(336.)
Entry for argument.

6. The parties to a special case may enter into an agreement in writing, that on the judgment of the court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the court, or in such manner as the court directs, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal. (E. 394.)

(337.)
Agreement as to payment of money and costs

7. This order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto. (E. 395.)

(338.)
Application of Order.

2.—ISSUES OF FACT WITHOUT PLEADINGS.

8. Where the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the court or a judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an

(339.)
Formal pleadings may be dispensed with.

**Order
XXXIII.
rr. 9-11.**

issue in the form No. 15, in appendix B, with such variations as circumstances require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the court or judge, in the same way as the proceedings in an action. (E. 397.)

(340.)
Order for pay-
ment on finding
of issue.

9. The court or a judge may, by consent of the parties, order that, upon the finding in the affirmative or negative of such issue as in the next preceding rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them, either with or without the costs of the cause or matter. (E. 398.)

(341.)
Judgment ac-
cording to agree-
ment.

10. Upon the finding of any such issue, as in rule 8 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the court or a judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial. (E. 399.)

(342.)
Effect of judg-
ment.

11. The proceedings upon such issue, as in rule 8 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. (E. 400.)

**Order
XXXIV.
r. 1.**

ORDER XXXIV.

TRIAL.

1.—Place.

(343.)
No local venue.

1. (1.) There shall be no local venue for the trial of any action, except when otherwise provided by statute. Every action shall, unless the court or a judge otherwise orders, be tried in the county in which the place named on the statement of claim is situated, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within six days after appearance. Where no place of trial is named, the place of trial shall, unless the court or a judge otherwise orders, be the county in which the defendant has been required to file his appearance. (E. 425.)

(2.) In any action brought for the recovery of a debt or liquidated demand in money under eighty dollars, in which the plaintiff does not reside within the province, the defendant after appearance shall be entitled to an order changing the place of trial to the county in which the defendant resides, or in which, in case of a corporation, the defendant corporation has its chief place of business, or in which the cause of action arose, on satisfying the court or a judge that he has a good defence to such action on the merits. (1900, c. 15, s. 4.)

Order XXXIV.
rr. (2)—2.
Change of venue to residence of defendant in actions under eighty dollars.

1. *A—Time of Trial.*

1A. (1.) A judge may at any time, except in Halifax during vacation, and during the regular sittings for the trial of civil causes, sit as a court to try or hear any cause to be tried without a jury or to dispose of any such cause partly tried or heard.

Special trials at any time other than sittings.

(2.) The plaintiff at any time after the close of the pleadings, and the defendant at any time after six weeks from the close of the pleadings, may apply to the Judge in Chambers, on notice to the other party to have such cause set down for special trial, and such judge may order that the trial thereof shall take place at such time and place as he deems proper, and thereupon such trial shall take place as so ordered, and the trial thereof, and the judgment of the judge so trying the same, shall have the same effect and be subject to the same procedure and right of appeal as if such cause was tried during a regular sitting of the court.

Order for special trial at any time.

(3.) Unless by consent there shall be at least ten days between the making of such order and the time fixed for such trial.

Ten days' order in lieu of notice.

(4.) Service of such order shall be sufficient notice of trial, and no entry for trial shall be required.

(5.) It shall be the duty of the judge, from time to time selected to sit in chambers, to try all causes so set down for trial. (R. S., c. 104; Or. 58, r. 9; 1891, c. 14, s. 1; S. C. R., 30th Oct., 1893, rr. 5, part 6.)

Chambers judge to try such actions.

2.—*Mode of Trial.*

2. Causes or matters which would heretofore have been deemed of an equitable nature shall be tried by a judge without a jury, unless the court or a judge otherwise orders. (E. 427.)

(344.)
Equity causes.

**Order
XXXIV.
rr. 3-7.**

(345.)
Power to dis-
pense with jury
in cases where
power existed
before.

3. The court or a judge may, if it appears desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previous to the first day of October, A.D. 1884, could, without any consent of parties, have been tried without a jury. (E. 428.)

(346.)
Power to dis-
pense with jury
in cases of ac-
count.

4. The court or a judge may direct the trial without a jury of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury. (E. 429.)

(347.)
Power to order
jury.

5. In any other cause or matter, upon the application of any party thereto for a trial with a jury of the cause or matter or any issue of fact, an order may be made for a trial with a jury. (E. 430.)

(348.)
Cases tried
without jury.

6. (a.) In every cause or matter, unless under the provisions of the next preceding rule, a trial with a jury is ordered, or under the Judicature Act a trial is required to be had with a jury, the mode of trial shall be by a judge without a jury: Provided that in any such case the court or a judge may at any time order any cause, matter, or issue to be tried by a judge with a jury, or by a judge sitting with assessors, or by an official referee or special referee with or without assessors.

Special jury
at plaintiff's
instance.

(b.) The plaintiff in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial or notice requiring a jury.

Special jury at
defendant's in-
stance.

(c.) The defendant in any cause or matter in which he is entitled to a jury, may have the issue tried by a special jury on giving notice in writing to that effect at the time when he gives notice requiring a jury, or at any time not less than six clear days before the time for which notice of trial has been given.

Order for
special jury.

(d.) A judge may at any time make an order for a special jury, upon such terms, if any, as to costs and otherwise, as are just. (E. 431.)

(349.)
Trial of
different ques-
tions in different
modes.

7. Subject to the provisions of the preceding rules of this order, the court or a judge may, in any cause or matter, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one

or more issues of fact be tried before any other or others. (E. 432.)

**Order
XXXIV.
rr. 8-14.**

8. Every trial of any question or issue of fact with a jury shall be by a single judge, unless such trial is specially ordered to be by two or more judges. (E. 433.)

(350.)
One judge to try.

9. Nothing in this order shall affect any proceedings under any statutory provisions relating to arbitration. (E. 434.)

(351.)
Arbitrations.

3.—*Notice and Entry of Trial.*

10. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial. (E. 435.)

(352.)
Plaintiff to give the notice.

11. (1.) If the plaintiff does not within six weeks after the close of the pleadings, or within such extended time as the court or a judge allows, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial.

(353.)
Defendant may do so.

(2.) If the plaintiff does not give notice of trial for the first sittings after the expiration of the said six weeks for which notice of trial may be given, the defendant may apply to the court or judge to dismiss the action for want of prosecution; and on the hearing of such application, the court or a judge may order the action to be dismissed accordingly, or may make such other order, and on such terms, as to the court or judge seems just. (E. 436.)

12. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein, and the place and day for which it is to be entered for trial. It shall be in the form No. 16, in appendix B, with such variations as circumstances require. (E. 437.)

(354.)
Form of notice.

13. Ten days' notice of trial shall be given, unless the party to whom it is given has consented, or is under terms, or has been ordered to take short notice of trial, and shall be sufficient in all cases, unless otherwise ordered by the court or a judge. Short notice of trial shall be five days' notice, unless otherwise ordered. (E. 438.)

(355.)
Length of notice

14. Notice of trial shall be given before entering the action for trial; and the action may be entered for

(356.)
Who may enter for trial.

**Order
XXXIV.
re. 15-21.**

trial, notwithstanding that the pleadings are not closed, provided that notice of trial has been given. Either party after notice of trial may enter for trial. If both parties enter the action for trial, it shall be tried in the order of the plaintiff's entry. (E. 439; O. (1897) r. 538, (c.)

(357.)
Notice of trial
to lapse if no
entry.

15. Unless the action is entered for trial within the time limited therefor, by one party or the other, the notice of trial shall be no longer in force, unless leave for a later entry is given by the court or a judge. (R. S., c. 104, Or. 34, r. 15.)

(358.)
Notice of trial
in Halifax.

16. Notice of trial for Halifax shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the trial may come on in its order on the list. (E. 441.)

(359.)
Notice else-
where.

17. Notice of trial elsewhere than in Halifax shall be deemed to be for the first day of the then next sittings at the place for which notice of trial is given. (E. 442.)

(360.)
Countermand
of notice.

18. No notice of trial shall be countermanded except by consent or by leave of the court or a judge, which leave may be given subject to such terms, as to costs or otherwise, as are just. (E. 443.)

(361.)
Copy of plead-
ings for judge.

19. The party entering the action for trial shall deliver to the proper officer a copy of the whole of the pleadings, for the use of the judge at the trial, on the day before the first day of the sittings of the court at which the action is to be tried, such copy to be certified by the prothonotary having charge of the pleadings filed. (E. 454; O. (1897), r. 539 part.)

(362.)
Entry for trial.

20. Entries for trials shall be given to the prothonotary on or before the Tuesday preceding the first day of the sittings, at which the causes are to be tried. (P. A. 200.)

(363.)
Docket, how
made up.

21. In making up the dockets separate lists shall be made of trials with juries and trials without juries. On each list the seniority of the causes shall be determined by the dates of the issue of the respective writs. All causes entered that have been on the list of the preceding sittings, and the trial of which has been deferred without the fault of the plaintiff or party then seeking to bring the cause to trial by notice of trial or entry, or which were not tried for want of time, shall be placed on the docket in the relative order in which they stood on the docket of such preceding sittings. (P. A. 201.)

21A. Notice of trial for a special sittings shall be given at least ten days before the commencement of that sittings. (S. C. R., Feb. 25th, 1896, r. 1.)

Order XXXIV.
rr. 21a-27.

21B. All causes for trial at a special sittings shall be entered with the Prothonotary at least ten days before the commencement of the sittings by the party giving the notice of trial. (S. C. R., Feb. 25th, 1896, r. 2.)

(363a.)
Special sittings,
notice of trial at.
(363b.)
Entry at.

A.—Proceedings at Trial.

22. If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him. (E. 455.)

(364.)
Non-appearance
of defendant.

23. If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him. (E. 456.)

(365.)
Non-appearance
of plaintiff.

24. Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the court or a judge upon such terms as seem fit, upon an application made within six days after the trial. Such application may be made at the sittings at which the trial took place, or in Halifax. (E. 457.)

(366.)
Setting aside
judgments
where one party
does not appear.

25. The judge may, if he thinks it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he thinks fit. (E. 458.)

(367.)
Postponement
of trial.

26. Where, through accident or mistake or other cause, any party omits or fails to prove some fact material to his case, the judge may proceed with the trial, subject to such fact being afterwards proved, at such time, and subject to such terms and conditions as to costs and otherwise, as the judge directs; and, if the case is being tried by a jury, the judge may direct the jury to find a verdict as if such fact had been proved, and the verdict shall take effect on such fact being afterwards proved as directed; and, if not so proved, judgment shall be entered for the opposite party, unless the court or a judge otherwise directs. This rule shall not apply to actions for libel or slander. (O. 1897, r. 549.)

(368.)
Evidence omitted
by accident
or mistake, how
supplied.

27. No trial shall be postponed on the application of a defendant or party in the position of a defendant on the ground of the absence of a material witness, unless

(369.)
Absence of material
witness.
Affidavit.

**Order
XXXIV.
rr. 28 - 32.**

the affidavit upon which such application is made, in addition to the usual grounds, distinctly states that the party so applying is advised and believes that he has a good defence upon the merits to the action (or counter-claim as the case may be), and that the application is not made solely for delay, but to enable the applicant to substantiate his defence. (P. A. 207.)

(370.)
Witness under
habeas corpus.

28. Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the court or a judge so directs, without payment of any fee. (E. 459.)

(371.)
Speeches to
jury.

29. Upon a trial with a jury, the addresses to the jury shall be regulated as follows: the party who begins, or his counsel, may at the close of his case, if his opponent does not announce any intention to adduce evidence, address the jury a second time for the purpose of summing up the evidence, and the opposite party, or his counsel, may open his case and also sum-up the evidence, if any, and the right to reply shall be the same as heretofore. (E. 460.)

(372.)
Evidence in
mitigation in
libel and
slander.

30. In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to the mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the judge, unless seven days at least before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence. (E. 461.)

(373.)
Restricting
cross-examina-
tion.

31. The judge may in all cases disallow any questions put in cross-examination of any party or other witness which appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter. (E. 462.)

(374.)
Judgment to be
entered at or
after trial.

32. The judge shall, at or after trial, direct judgment to be entered as he thinks right, and no motion for judgment shall be necessary. E. 463; E. R. S. C., Feb, 1892, r. 1.)

33. The prothonotary or other proper officer present at any hearing or trial shall make a note of the times at which such hearing or trial commences and terminates respectively, on each day on which the same takes place. (E. 464.)

**Order
XXXIV.
rr. 33a-34e.**
(375.)
Note of proceedings at trial.

34. Upon every trial the proper officer shall enter all such findings of fact as the judge directs to be entered, and the directions, if any, of the judge as to judgment, and the certificates, if any, granted by the judge, in a book to be kept for the purpose. (E. 465.)

(376.)
Book of record of trial.

34a. Upon the trial of any cause the judge shall take the evidence of witnesses fully in writing, together with his rulings on the reception or rejection of evidence. (1886, c. 50, s. 5.)

(376a.)
Judge to take evidence in full on trials.

34b. The counsel for either party, if the judge rules against him on a question of evidence, may reduce such question to writing, and hand the same to the judge, who shall transcribe the same on his minutes or attach the same thereto, and enter upon his minutes his ruling thereon. (1886, c. 50, s. 6.)

(376b.)
Judge to enter rulings on evidence, &c.

34c. The Chief Justice may, in his discretion, appoint official reporters to the Supreme Court, who shall be sworn by a judge thereof to the faithful performance of their duties, and the judges may prepare a scale of fees to be paid for their services, which fees may be taxed as other fees, and be costs in the cause unless otherwise ordered. (1886, c. 50, s. 7.)

(376c.)
Official reporters for Supreme Court.

34d. At any time after issue joined, the court or judge, upon consent of both parties, shall, on the application of either party, supported by affidavit, order the evidence, the rulings on such evidence and the summing up to be taken down and transcribed by a stenographer, and the evidence, rulings and summing up so transcribed shall be filed with the prothonotary, and shall constitute the report of such evidence, rulings and summing up in the cause, provided that no fees shall be taxed for the services of any such stenographer upon any trial unless such reporting has been so ordered, or unless the presiding judge certifies that such reporting was necessary. (1886, c. 50, s. 8.)

(376d.)
Judge may order evidence taken by reporter.

34e. Where judgment has been delivered or a verdict filed on the trial of any action or issues, the judge shall, if requested by either party to the action or issues, within five days after such request, deliver to the prothonotary of the court, or, by consent, to either party, his original notes of evidence taken upon such trial, and his rulings

(376e.)
Judge to file minutes of evidence taken.

Order
XXXIV.
rr. 35-40.

on the reception or rejection of evidence and in actions tried with a jury a report of his summing up. (R. S. c. 104, Or. 58, r. 7 (5); 1886, c. 50, s. 10; 1899, c. 39, s. 1.)

5.—Assessors and Referees.

(377.)
Trials with as-
sessors.

35. Trials with assessors shall take place in such manner and upon such terms as the court or a judge directs. (E. 467.)

(378.)
Trials by
Referee.

36. Where any cause or matter, or any question in any cause or matter, is referred to a referee, he may, subject, to the order of the court or a judge, hold the trial at or adjourn it to any place which he deems most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he deems expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the court or a judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried with a jury. (E. 472.)

(379.)
Evidence and
procedure be-
fore Referee.

37. Subject to any order of the court or the judge ordering the reference, at any trial before a referee, the evidence shall be taken, the attendance of witnesses enforced, and the trial conducted in the same manner, as nearly as circumstances will admit, as if the trial was before a judge. (E. 473.)

(380.)
Authority of
Referee.

38. Subject to any such order as in the next preceding rule mentioned, the referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a judge. (E. 474.)

(381.)
No authority to
commit.

39. Nothing in these rules contained shall authorize any referee to commit any person to prison or to enforce any order by attachment or otherwise. (E. 475.)

(382.)
Report of Ref-
eree.

40. The referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the court, or state any facts specially, with power to the court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the court directs, and the court may require any explanation or reasons from the referee, and remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other referee; or the court may decide the question

referred to any referee on the evidence taken before him, either with or without additional evidence, as the court directs. (E. 476.)

Order
XXXIV.
rr. 41—44.

41. Where a report is made by a referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the solicitors, or address for service of each party, who shall in due course of post be deemed to have notice of such report. (E. 477.)

(383.)
Notice of Referee's report.

42. Where the report of the referee has been made in a cause or matter, the further consideration of which has been adjourned, any party may, on the hearing of such further consideration, without notice of motion or summons, apply to the court or judge to adopt the report, or without leave of the court or a judge give not less than four days' notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee. (E. 478.)

(384.)
Notice to adopt report.

43. Where the report of the referee has been made in a cause or matter, the further consideration of which has not been adjourned, any party may, by an eight days' notice of motion, apply to the court to adopt and carry into effect the report of the referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other referee. (E. 479.)

(385.)
Notice of motion.

43a. Where the whole of any cause or matter is referred to a referee under an order of court, he may, subject to any directions in the order, exercise the same discretion as to costs as the court or a judge could have exercised. (E. 479b; E. R. S. C., Dec., 1889, r. 4.)

(385a.)
Costs in discretion of official referee.

43b. The provisions of the nine next preceding rules of this Order shall apply where any cause or matter or any question or issue of fact therein is referred to an officer of the court or to a special referee or arbitrator. Provided that where the arbitrator is appointed otherwise than by an order of the court the provisions of rule 36 as to sitting *de die in diem* shall not apply. (E. 479c., E. R. S. C., Dec. 1889, r. 5.)

(385b.)
Arbitrator under an order to have the powers of an official referee.

6.—*Writ of Inquiry and Reference as to Damages.*

44. The provisions of rules 13, 14, 18, 25, 29, 30 and 31 of this Order shall, with the necessary modifications, apply to an inquiry pursuant to a writ of inquiry. (E. 480.)

(386.)
Certain rules relating to trials to apply.

Order

XXXIV.

rr. 45-48.

(387.)

Inquiry of damages before officer of Court, or other person.

45. In every action or proceeding in which it appears to the court or a judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the court or a judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the court or other person, and the attendance of witnesses and the production of documents before such officer or other person may be compelled by *subpœna*, and such officer or other person may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment and otherwise, as upon the finding of a jury upon a writ of inquiry. (E. 481.)

(388.)

To what time damages to be assessed.

46. Where damages are to be assessed in respect to any continuing cause of action they shall be assessed down to the time of the assessment. (E. 482.)

(389.)

Arrest of witness.

47. If it is made to appear to a judge that a witness has been duly served with a *subpœna*, and his fees for travel and attendance paid or tendered to him, and that such witness refuses or neglects to attend to give evidence as required by his *subpœna*, and that his evidence is necessary and material, such judge may in addition to any powers which he possesses for the punishment of such witness, issue a warrant under his hand and seal directed to any sheriff or other officer or officers for the immediate arrest of such witness, to be brought before the court or person authorized to hear the evidence, for the purpose of giving evidence in the cause. (1880, c. 13, s. 23.)

(390.)

Form of warrant.

48. The warrant referred to in the next preceding rule may be in the form No. 6, in appendix H, with such variations as circumstances require. (R. S., c. 104, Or. 34, r. 48.)

ORDER XXXV.

Order XXXV.
rr. 1-3a.

1.--EVIDENCE GENERALLY.

1. In the absence of any agreement in writing between the solicitors of all parties, and subject to these rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *viva voce* and in open court, but the court or judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the court or judge thinks reasonable, or that any witness whose attendance in court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before a commissioner or examiner: Provided that where it appears to the court or judge that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit. (E. 483.)

(391.)
Evidence at trial.

Cross-examination.

2. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the court or a judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence, and on like leave of the court or a judge. (E. 485.)

(392.)
Evidence in another cause to be read without order

3. Certified copies of all writs, records, pleadings, and documents filed in the Supreme Court shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible. (E. 486.)

(393.)
Certified copies admissible.

2.—EXAMINATION OF WITNESSES.

3A. Any witness who is about to leave the province or who from illness or other infirmity is unable to travel, may be examined before a judge or commissioner on due notice being given to the adverse party, and any party upon showing sufficient cause by affidavit, may obtain from a judge or commissioner an order in such terms as he thinks fit, to compel an unwilling witness in any such cause to give evidence before the judge or commissioner. (1887, c. 15, s. 6.)

(393a.)
Depositions of witnesses about to leave the province, aged or infirm, how taken.

Order XXX.
rr. 3b-8.

(397b.)
Notice of de-
positions to be
given, length
and contents of
notice.

3B. At least twenty-four hours' notice in writing of such examination shall be served upon the adverse party, or his solicitor or counsel, where the person so served resides within the county in which the witness is to be examined, and an additional twenty-four hours' notice for every twenty miles that the person so served resides beyond the limits of the county, and such notice shall in all cases contain the name of the witness to be examined. (1887, c. 15, s. 2.)

(394.)
Power to order
examination of
witness.

4. The court or a judge may, in any cause or matter where it appears necessary for the purposes of justice, make any order for the examination upon oath before the court or judge or any officer of the court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the court or judge directs. (E. 487.)

(395.)
Forms of order
for commission
and of writ.

5. Orders for a commission to examine witnesses shall be in the forms Nos. 33 and 34, appendix K, and the writ of commission shall be in the form No. 11 in appendix J, with such variations as circumstances require. (E. 488.)

(395a.)
Letters of
request.

5A. If the court or a judge so orders, a request to examine witnesses shall be issued in lieu of a commission. Such order and request respectively shall be in the forms No. 34A. and 34B. in appendix K, with such variations as circumstances require. (E. 488A; E. R. S. C., Oct., 1884, r. 6.)

(396.)
Order to pro-
duce.

6. The court or a judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order, the production of which the court or judge thinks requisite: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. (E. 489.)

(397.)
Disobedience to
order for pro-
duction.

7. Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of court, and may be dealt with accordingly. (E. 490.)

(398.)
Expenses of
witnesses.

8. Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct money and payment for

expenses and loss of time as upon attendance at a trial in court. (E. 491.)

Order XXXV.
rr. 9-13.

9. Where any witness or person is ordered to be examined before any officer of the court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties. (E. 492.)

(399.)
Examiner to have copy of order and pleadings.

10. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination. (E. 493.)

(400)
Mode of examination.

11. The depositions taken before an officer of the court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner, not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as think fit to attend. If the witness refuses to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there appears any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which are objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question. (E. 494.)

(401.)
Depositions, how taken and signed.

Objections to questions.

12. If any person duly summoned by *subpœna* to attend for examination refuses to attend, or if, having attended, he refuses to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed, and thereupon the party requiring the attendance of the witness may apply to the court or a judge *ex parte* or on notice for an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be. (E. 495.)

(402.)
Witness refusing to attend or give evidence.

13. If any witness objects to any question put to him before an examiner, the question so put, and the ob-

(403.)
Witness objecting to question.

**Order XXXV.
rr. 14-17.**

jection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the prothonotary to be filed, and the validity of the objection shall be decided by the court or a judge. (E. 496.)

(401.)
Witness may be
ordered to pay
costs.

14. In any case under the next two preceding rules, the court or a judge may order the witness to pay any costs occasioned by his refusal or objection. (E. 497.)

(405.)
Return of depo-
sitions.

15. When the examination of any witness before any examiner has been concluded, the original depositions, authenticated by the signature of the examiner, shall be returned by him to the prothonotary to whom the same is returnable, and by him shall be filed. (E. 498.)

(405a.)
Depositions of
witnesses
abroad opened
by either party
—objec-
tions to within
8 days.

15A. Depositions of witnesses residing abroad may be opened by the prothonotary at the instance of either party; and either party may notify the other of the return of the commission and the depositions taken thereunder, and no objections to the reception in evidence of such depositions shall be allowed, unless taken within eight days next after such notice served; the party objecting shall be required to specify his objections in writing, and the court or a judge, on summons, may then hear such objections and decide thereon. (C. 96, R. S., 4th ser., s. 2, S. C. R., 10th Dec. 1884, r. 1, (1.))

(405b.)
Not to be set
aside on tech-
nical grounds.

15B. No deposition of a witness taken under the provisions of any rule of this Order shall be set aside unless the court or judge is of opinion that the objections thereto are not of a purely technical character, and that substantial justice requires that such objections should prevail. (C. 96, R. S., 4th ser., s. 10; S. C. R., 10th Dec., 1884, r. 1, (2.))

(406.)
Special report
by examiner.

16. The person taking the examination of a witness under these rules may, and if need be shall, make a special report to the court touching such examination and the conduct or absence of any witness or other person thereon, and the court or a judge may direct such proceedings and make such order as upon the report they or he thinks just. (E. 499.)

(407.)
Using deposi-
tion in evidence.

17. Except where by this order is otherwise provided, or is directed by the court or a judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same is offered, unless the court or a judge is satisfied that the deponent is dead, or beyond the jurisdiction of the court, or unable from sickness or other infirmity to

attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate. (E. 500.)

18. Any officer of the court or other person directed to take the examination of any witness or person may administer oaths. (E. 501.)

(408.)
Authority to administer oaths.

19. Any party in any cause or matter may by *subpoena ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the court or other person appointed to take the examination, for the purpose of using his evidence upon any proceeding in the cause or matter, in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used, or which is used, on any proceeding in the cause or matter shall be bound on being served with such *subpoena* to attend before such officer or person for cross-examination. (E. 502.)

(409.)
Attendance of witnesses before officers—how secured.

20. Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial. (E. 503.)

(410.)
Evidence after trial—how taken.

21. The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage. (E. 504.)

(411.)
Practice as to cross-examination.

22. The practice of the court with respect to evidence at a trial when applied to evidence to be taken before an officer of the court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which are given. (E. 505.)

(412.)
Special directions as to evidence.

23. No affidavit or deposition filed or made before issue joined in any cause or matter shall, without special leave of the court or a judge, be received at the hearing or trial thereof, unless within one month after issue joined, or, within such longer time as is allowed by special leave of the court or a judge, notice in writing has been given by the party intending to use the same to the opposite party of his intention in that behalf. (E. 506.)

(413.)
Notice before using affidavit.

24. All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter. (E. 507.)

(414.)
Evidence may be used in subsequent stages.

Order XXXV.

3.—SUBPÆNA.

rr. 25—34.

(415.)
Præcipe for
subpæna.

25. Where it is intended to sue out a *subpæna*, a *præcipe* for that purpose, in the form No. 16, in appendix G, and containing the name or firm of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm of the principal solicitor, shall in all cases be delivered and filed. (E. 508.)

(416.)
Forms of sub-
pæna

26. A writ of *subpæna* shall be in one of the forms 1, 2, 3, 4 and 5 in appendix J, with such variations as circumstances require. (E. 509.)

(417.)
Subpæna for
Chambers.

27. Where a *subpæna* is required for the attendance of a witness for the purpose of proceedings in Chambers, such *subpæna* shall issue upon an order from the judge. (E. 510.)

(418.)
Number of
names in sub-
pæna.

28. Every *subpæna* other than a *subpæna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names. (E. 511.)

(419.)
Number in
subpæna duces
tecum.

29. No more than three persons shall be included in one *subpæna duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpæna* for each person if it is deemed necessary or desirable. (E. 512.)

(420.)
Correcting
errors in
subpæna, &c.

30. In the interval between the suing out and service of any *subpæna* the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected *præcipe* of such *subpæna* marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same. (E. 513.)

(421.)
Service of sub-
pæna.

31. The service of a *subpæna* shall be effected by delivering a copy of the writ, and of the indorsement thereon, and at the same time producing the original writ. (E. 514.)

(422.)
Affidavits of
service.

32. Affidavits filed for the purpose of proving the service of a *subpæna* upon any defendant must state when, where, and how, and by whom, such service was effected. (E. 515.)

(423.)
Subpæna, when
to be served.

33. The service of any *subpæna* shall be of no validity if not made within twelve weeks after the issue of the writ. (E. 516.)

4.—PERPETUATING TESTIMONY.

(424.)
Action to per-
petuate testi-
mony.

34. Any person who would under the circumstances alleged by him to exist become entitled, upon the happening of any future event, to any honour, title, dignity, or

office, or to any estate or interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim. (E. 517.)

35. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant; and in all proceedings in which the depositions taken in any such action in which the Attorney-General was so made a defendant are offered in evidence, such depositions shall be admissible, notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken. (E. 518.)

(425.)
When Crown interested, Attorney-General to be a party.

36. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose. (E. 519.)

(426.)
Action must be brought.

37. No action to perpetuate the testimony of witnesses shall be set down for trial. (E. 520.)

(427.)
Trial not necessary.

5.—FOREIGN JUDGMENT.

38. In any action brought in this province against any person domiciled therein, on a judgment obtained in an action in any other province or country to which no defence was made, any defence which might have been made to the original action may be made to the action on the judgment. (1880, c. 13, s. 27.)

(428.)
Action on foreign judgment by default, defence to original action available.

ORDER XXXVI.

1.—AFFIDAVITS AND DEPOSITIONS.

Order
XXXVI.
rr. 1—2.

1. Upon any motion, petition, or summons, evidence may be given by affidavit; but the court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit, and may make such interim or other order as appears necessary to meet the justice of the case. (E. 521; O. (1881) r. 283.)

(429.)
Affidavit may be followed by cross-examination.

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there is more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or

(430.)
How intituled.

**Order
XXXVI.
rr. 3—9.**

defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed. (E. 522.)

(431.)
Affidavit, how
formed.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which unnecessarily sets forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same. (E. 523.)

(432.)
Before whom to
be sworn.

4. Affidavits sworn in Nova Scotia shall be sworn before a judge, commissioner, or officer empowered under these rules to administer oaths. (E. 524.)

(433.)
Time and place
of swearing to
be stated.

5. Every commissioner shall express the time when and the place where he takes any affidavit, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the court or a judge; and every such commissioner shall express the time when, and the place where, he does any other act incident to his office. (E. 525.)

(434.)
Affidavits sworn
abroad.

6. All examinations, affidavits, declarations, affirmations, and attestations of honour, in causes or matters depending in the court, may be sworn and taken out of Nova Scotia, as prescribed in "The Evidence Act." (E. 526.)

(435.)
Mode of draw-
ing affidavits.

7. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule. (E. 527.)

(436.)
Description of
deponent.

8. Every affidavit shall state the description and true place of abode of the deponent, and shall be signed by him. (E. 528.)

(437.)
Jurat where
more than one
deponent.

9. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents. (E. 529.)

**Order
XXXVI.
rr. 10-16.**

10. Every affidavit or other proof used in a cause, matter or proceeding shall be filed. (E. 530.)

11. The court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client. (E. 531.)

(138)
Must be filed.
(439.)
Striking out
parts of aff-
davits.

12. No affidavit, having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the court or a judge, be read or made use of in any matter depending in court, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor in the case of an erasure unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it. (E. 532.)

(440.)
Interlineations
and alterations.

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent. (E. 533.)

(441.)
Illiterate de-
ponents.

14. The court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by mis-description of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. (E. 534.)

(442.)
Defects in title
or jurat.

15. A copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the certificate of the prothonotary. (E. 535.)

(443.)
Certified copy
may be used.

16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent of such solicitor, or before the party himself. (E. 536.)

(444.)
Affidavit not to
be sworn before
solicitors, &c.,
of party.

**Order
XXXVI.****rr. 17-24.**(445.)
Or their clerks
or partners.(446.)
Filed too late.Affidavits in
reply.(447.)
Orders not valid
unless affidavit
made before
motion.(447a.)
Verification of
new trustee's
consent to act.(448.)
Notice of inten-
tion to use affi-
davit.(449)
Affidavits may
be re-used.(450.)
Alterations in
exhibit.(451.)
Exhibits not to
be annexed.(452.)
Title of certifi-
cate on exhibits.

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner. (E. 537.)

18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the court or a judge. On motions founded on affidavits either party may, by leave of the court or a judge, make affidavits in answer to the affidavits of the opposite party, as to new matter arising out of such affidavits. (E. 538, P. A. 92.)

19. Except by leave of the court or a judge no order made *ex parte* in court, founded on any affidavit, shall be of any force, unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion. (E. 539.)

19A. The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor. Form No. 25 in appendix L, shall be used, with such variations as circumstances require. (E. 539A, E. R. S. C., Dec. 1885, r. 14.)

2.—AFFIDAVITS AND EVIDENCE IN CHAMBERS.

20. The party intending to use any affidavit in support of any application made by him in chambers shall give notice to the other parties concerned of his intention in that behalf. (E. 540.)

21. All affidavits which have been previously made and read in court upon any proceeding in a cause or matter may be used before a judge in chambers. (E. 541.)

22. Every alteration in an account verified by affidavit shall be marked with the initials of the commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure. (E. 542.)

23. Accounts, extracts, and other documents, referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits. (E. 543.)

24. Every certificate on an exhibit referred to in an affidavit, signed by the commissioner or officer before whom the affidavit is sworn, shall be marked with the short title of the cause or matter. (E. 544.)

3. - TRIAL ON AFFIDAVIT.

Order
XXXVI.
rr. 25 30.

25. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties agree upon, or the court or a judge allows, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof. (E. 545.)

(453.)
Plaintiff to serve
list of affidavits.

26. The defendant, within fourteen days after delivery of such list, or within such time as the parties agree upon, or the court or a judge allows, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof. (E. 546.)

(454.)
Defendant to
serve list of
affidavits.

27. Within seven days after the expiration of the last mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof. (E. 547.)

(455.)
Affidavits in
reply.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the court or judge specially appoints; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the court or a judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production. (E. 548.)

(456.)
Cross-examina-
tion of de-
ponents.

Notice.

29. The party to whom such notice as is mentioned in the next preceding rule is given may compel the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined. (E. 549.)

(457.)
Compelling at-
tendance.

30. When the evidence under this order is taken by affidavit, notice of trial shall be given at the same time, after the close of the evidence, as in other cases is by these rules provided after the close of the pleadings. Other affidavits may be used if all the parties interested consent thereto, or a court or a judge so orders. (E. 550.)

(458.)
Notice of trial
after affidavits
closed, &c.

**Order
XXXVII.
rr. 1—8.**

ORDER XXXVII.

MOTION FOR NEW TRIAL.

(459.)
Application for
new trial, where
made.

1. Every motion for a new trial, or to set aside a verdict, finding, or judgment, shall be made (1) in every cause or matter where there has been a trial thereof, or of any issue therein with a jury, to the court (*in banc*), and (2) where there has been a trial without a jury, by appeal to the court (*in banc*). (E. 551.)

(460.)
Application to
be by notice of
motion, not by
rule nisi.

2. Every application for a new trial shall be by notice of motion, and no rule *nisi*, order to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of. (E. 553.)

(461.)
When notice to
be given.

3. The notice of motion shall be served within ten days after the trial, but the court or a judge may, either before or after the expiration of that period, enlarge the time for giving notice. (E. 554.)

(462.)
Notice of motion
for new trial,
amending with
and without
leave.

4. The notice may be amended at any time by leave of the court or a judge, on such terms as the court or judge thinks just; but such notice may be amended without leave at any time within fifteen days after the filing or reception of the judge's notes or report of the summing up: provided the hearing of the motion has not then been commenced. (E. 555.)

* * * * *

(464.)
New trial only
for substantial
wrong.

6. A new trial shall not be granted on the ground of mis-direction, or of the improper reception or rejection of evidence, or because the verdict of the jury was not taken upon a question which the judge at the trial was not asked to leave to them, unless in the opinion of the court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appears to such court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties. (E. 556.)

New trial as to
part.

(465.)
New trial as to
part not to affect
other findings.

7. A new trial may be ordered on any question, whatever are the grounds for the new trial, without interfering with the finding or decision upon any other question. (E. 557.)

(466.)
Stay of pro-
ceedings.

8. When notice of motion for a new trial or appeal has been served, after either of the modes of trial men-

**Order
XXXVII.**

tioned in rule 1 of this Order, the further proceedings on the verdict, finding, or judgment may be stayed, in whole or in part, until the decision on such motion by the court or by the judge who presided at the trial, on such terms as the court or judge thinks fit. The applicant, however, shall be entitled to an order so staying the proceedings on filing sufficient security, or making deposit of money, to the approval of the court or judge, in such reasonable amount as the court or judge directs, to respond the judgment to be finally given in the cause or matter. An application to the judge for such stay of proceedings shall not prejudice the applicant's right to apply to the court for such stay. (R. S., c. 104, Or. 37, r. 8.)

ORDER XXXVIII.

MOTION FOR JUDGMENT.

**Order
XXXVIII.
PR. 1-6.**

1. Except where by the Act or by these rules it is provided that judgment may be obtained in any other manner, the judgment of the court shall be obtained by motion for judgment (E. 559.) (467.)
Judgment by motion.

2. Every arbitrator or referee to whom a cause or matter is referred for trial shall direct how judgment shall be entered, and such judgment shall be entered accordingly by the prothonotary. (E. 560; E. R. S. C., Feb., 1892, r. 4; E. 564A; E. R. S. C., Dec., 1889, r. 6.) (468.)
Judgment to be entered by referee.

3. Where, at or after a trial with a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered. (E. 561.) (469.)
Motion for judgment when finding wrongly entered.

4. Where, at or after a trial by a judge, either with or without a jury, the judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong. (E. 562.) (470.)
Motion for judgment where judgment wrongly entered on findings.

5. An application under rules 3 and 4 of this Order shall be to the court. (E. 563.) (471.)
Application to be to the Court.

6. Where, at a trial by an arbitrator or referee, he has directed that any judgment be entered, any party may move to set aside such judgment and to enter any other (472.)
Setting aside judgment of referee.

**Order
XXXVIII.
rr. 7-11.**

judgment, on the ground that upon the finding as entered the judgment so directed is wrong. Such motion shall be made to the court. (E. 564; E. 564A; E. R. S. C., Dec., 1889, r. 6.)

(473.)
Application for
judgment after
issues found.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within ten days after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties (E. 565.)

(474.)
Application for
judgment when
some of the is-
sues have been
found.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the court or a judge for leave to set down a motion for judgment, without waiting for such trial or determination. And the court or judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as appear just, and may give any directions which appear desirable as to postponing the trial of the other issues of fact. (E. 566.)

(475.)
Limitation of
motion for judg-
ment.

9. No motion for judgment shall, except by leave of the court or judge, be set down after the expiration of one year from the time when the party seeking to set down the same first became entitled so to do. (E. 567.)

(476.)
Powers of Court
on motion.

10. Upon a motion for judgment, or upon an application for a new trial, the court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it is of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it thinks fit. (E. 568.)

(477.)
Pending appli-
cation turned
into motion for
judgment or
hearing of
cause.

11. Where it is made to appear to the court or a judge, on the hearing of any application which is pending before the court or judge, that it will be conducive to

**Order
XXXVIII.
r. 12.**

the ends of justice to permit it, the court or judge may direct the application to be turned into a motion for judgment, or a hearing of the cause or matter; and thereupon the court or judge may make such order as to the time and manner of giving the evidence in the cause or matter, and with respect to the further prosecution thereof, as the circumstances of the case require; and upon the hearing it shall be discretionary with the court or judge to either pronounce a judgment or make such order as the court or judge deems expedient. (O. 1897, r. 617.)

12. (1) At any time after the writ has been issued the plaintiff may, by leave of the court or judge, serve notice of motion for judgment. Such leave may be given *ex parte* and subject to such directions, as to the service of the notice of motion and filing of the affidavits and otherwise as seems just, and may be indorsed upon the notice of motion or embodied in an order, if an order is deemed necessary. (478.)
Motion for judgment by leave after service of writ.

(2) Upon the hearing of such motion the court or judge may grant the application on such terms and conditions as are thought proper, or may refuse the same; or instead of either granting or refusing the same, may give such directions for the examination of either parties or witnesses, or for the making of further inquiries, or with respect to the further prosecution of the suit, as the circumstances of the case require, and upon such terms as to costs as the court or judge thinks right. (O. 1897, r. 608.)

ORDER XXXIX.

ENTRY OF JUDGMENT.

**Order
XXXIX.
rr. 1—2.**

1. Every judgment shall be entered by the Prothonotary in the book to be kept for the purpose. The forms in appendix F shall be used with such variations as circumstances require. No judgment heretofore entered up shall be held to be invalid on the ground that the pleadings were not delivered to the officer for the purpose of such entry. (E. 569.) (479.)
Judgment, how entered.

2. Where any judgment is pronounced by the court or a judge in court, the entry of the judgment shall be dated as of the day on which such judgment is pronounced, unless the court or judge otherwise orders, and the judgment shall take effect from that date: Provided (480.)
Date of entry where judgment pronounced in Court.

**Order
XXXIX.
rr. 3-10.**

(481.)
Date in other
cases.

that by special leave of the court or a judge a judgment may be ante-dated or post-dated. (E. 571.)

3. In all cases not within the next preceding rule the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date. (E. 572.)

* * * * *

(483.)
Judgment for an
act to be done.

5. Every judgment or order, made in any cause or matter requiring any person to do an act thereby ordered, shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz :—

“If you, the within-named A. B., neglect to obey this judgment (*or order*) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (*or order*).” (E. 573.)

(484.)
Duties of Pro-
thonotary on
entering judg-
ment.

6. Where, under the Act or these rules or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the prothonotary shall examine the affidavit or document produced, and if the same is regular and contains all that is by law required he shall enter judgment accordingly. (E. 574.)

(485.)
Judgment on
order, certifi-
cate, or return
to writ.

7. Where, by the Act or these rules or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order, certificate or return shall be a sufficient authority to the officer to enter judgment accordingly. (E. 575.)

(486.)
Master's certifi-
cate on refer-
ence.

8. Where reference is made to a referee or Master to ascertain the amount for which final judgment is to be entered, the certificate of the referee or Master shall be filed when judgment is entered. (E. 576.)

(487.)
Solicitor's con-
sent necessary.

9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent. (E. 577.)

(488.)
Consent of de-
fendant appear-
ing in person.

10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a judge and gives his consent in person, or unless his written consent is attested

by a solicitor acting on his behalf, except in cases where the defendant is a barrister or solicitor. (E. 578.)

**Order
XXXIX.
r. II.**

11. Satisfaction pieces shall be signed by the plaintiff or his personal representatives, or by a solicitor specially authorized for that purpose, unless a judge, on special circumstances set forth by affidavit, dispenses with such authorization. The satisfaction piece may be in the form No. 18, appendix F. (P. A. 281.)

(489.)
Satisfaction
pieces.

ORDER XL.

EXECUTION

**Order XL.
rr. 1-6.**

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand therefor, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. (E. 579.)

(490.)
Effect of service
of judgment or
order.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may, on breach or non-performance of the condition, take either such proceedings as the judgment or order in such case warrants, or such proceedings as might have been taken if no such judgment or order had been made, unless the court or a judge otherwise directs. (E. 580.)

(491.)
Non performance
of condition
on which
judgment ob-
tained.

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money might have been enforced at the time of the coming into force of these rules. (E. 581.)

(492.)
Enforcing judg-
ment for recov-
ery of money.

4. A judgment for the payment of money into court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment, or by writ of execution. (E. 582.)

(493.)
Judgment for
payment into
Court.

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession. (E. 583.)

(494.)
Judgment for
land.

6. A judgment for the recovery of any property other than land or money may be enforced;

(495.)
Judgment for
other property.

Order XL.
rr. 7-12.

(a) By writ for delivery of the property ;

(b) By writ of attachment ;

(c) By writ of sequestration. (E. 584.)

(496.)
Judgment to do
or not to do an
act.

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal. (E. 585.)

(497.)
Meaning of
expressions,
"writ of execu-
tion" and "is-
suing execution
against any
party."

8. In the rules of this Order the expression "writ of execution" includes the writ of execution heretofore used, and writs of sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the expression "issuing execution against any party" means the issuing of any such process against his person or property as under the preceding rules of this Order or under the practice of the court at the time of the coming into force of these rules, is applicable to the case. (E. 586.)

(498.)
Execution after
judgment on
contingency.

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the court or a judge for leave to issue execution against such party. And the court or judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried. (E. 587.)

* * * * *

(500.)
Officer to see
judgment before
issuing execu-
tion.

11. No writ of execution to enforce any order or decree shall issue without the production to the prothonotary by whom the same should be issued of such order or decree. And the prothonotary shall be satisfied that the proper time has elapsed to entitle the creditor to execution. (E. 589.)

(501.)
Præcipe for ex-
ecution.

12. No writ of execution shall issue without the party issuing it, or his solicitor, filing a *præcipe* for that purpose ; the *præcipe* shall contain the title and number of the action, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties or of the firm against whom, or against whose goods, the execution is to be issued ; and shall be signed by or on behalf of the solicitor of the party issuing it,

or by the party issuing it, if he does so in person. The forms in appendix G shall be used, with such variations as circumstances require. (E. 590.)

Order XL.
rr. 13-17.

13. Every writ of execution shall be indorsed with the name of the solicitor, or firm of solicitors, actually suing out the same, and when the solicitor actually suing out the writ sues out the same as agent for another solicitor, the name of such other solicitor shall also be indorsed upon the writ; and if no solicitor is employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the place of such plaintiff's or defendant's residence. (E. 591.)

(502.)
Indorsement of
name of solicitor,
or party
suing in person.

14. Every writ of execution shall bear date of the day on which it is issued. The forms in appendix H shall be used, with such variations as circumstances require. (E. 592.)

(503.)
Date and form.

15. In every case of execution the party entitled to execution may levy the fees and commissions of the sheriff executing the writ and the costs and expenses of execution, over and above the sum recovered. (E. 593.)

(504.)
Levy for fees,
poundage and
expenses.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of six per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than six per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed, and the indorsement may state how the writ is to be executed. (E. 594, and P. A. 265.)

(505.)
Indorsement of
directions to
sheriff.

17. Every person to whom any sum of money or any costs are payable under a judgment or order may, so soon as the money or costs are payable, sue out one or more writ or writs of execution to enforce payment thereof, subject nevertheless as follows:

(506.)
Execution, how
soon it may
issue.

(a.) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period;

Payment postponed.

**Order XL.
FF. 18 23.**

Stay of execution.

(b.) The court or a judge may, at or after the time of giving judgment or making an order, stay execution until such time as it or he thinks fit. (E. 595.)

(507.)
Separate writs
for debt and
costs.

18.* Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be at the election of the party entitled thereto either one writ or separate writs of execution for the recovery of the sum, and for the recovery of the costs, but a second writ shall only be for costs, and shall be issued not less than eight days after the first writ. (E. 596.)

(508.)
When execution to issue on judgment for other than money or land.

19. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, shall not issue execution until fourteen days, or such longer period as the court or a judge directs, has elapsed, unless the court or a judge orders execution to issue at an earlier date with or without terms. (E. 597.)

(509.)
Duration of
execution.
Renewal.

20. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may at any time before its expiration, by leave of the court or a judge, be renewed, by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the court and having indicated on it the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the court and date; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof. (E. 598.)

(510.)
Evidence of renewal.

21. The production of a writ of execution, or of the notice renewing the same, purporting to be sealed and marked as in the next preceding rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed. (E. 599.)

(511.)
Execution within six years.

22. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order. (E. 600.)

(512.)
In certain cases application necessary before execution.

23. In the following cases, viz:—

(a.) Where six years have elapsed since the judgment or date of the order, or any change has taken

place by death or otherwise in the parties entitled or liable to execution; **Order XL.
FF. 24-28.**

- (b.) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;
- (c.) Where a party is entitled to execution upon a judgment of assets *in futuro*;
- (d.) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company; or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the court or a judge for leave to issue execution accordingly. And such court or judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such court or judge may impose such terms as to costs or otherwise as are just. (E. 601.)

24. Every order of the court or a judge in any cause or matter may be enforced against all persons bound thereby, in the same manner as a judgment to the same effect. (E. 602.) (513.)
Enforcing order

25. Any person, not being a party to a cause or matter, who obtains any order or in whose favor any order is made, may enforce obedience to such order by the same process as if he was a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he was a party to such cause or matter. (E. 604.) (514.)
Execution by or
against a third
party.

26. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever. (E. 606.) (515.)
Other modes of
enforcement re-
main.

27. Nothing in this Order shall affect the order in which writs of execution may be issued. (E. 607.) (516.)
Order of writs.

28. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction or judgment for the specific performance of any contract, is not complied (517.)
Enforcement of
mandatory
judgment.

Order XL.
rr. 29—32.

with, the court or a judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person, appointed by the court or a judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the court or a judge directs, and execution may issue for the amount so ascertained, and costs. (E. 608.)

(518.)
Execution
against corpora-
tion.

29. Any judgment or order against a corporation wilfully disobeyed may, by leave of the court or a judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property. (E. 609.)

(518a.)
Enforcing
award.

29A. An award may, with the leave of the court or a judge, and on such terms as are just, be enforced at any time, though the time for moving to set it aside has not elapsed. (E. 609A; E. R. S. C., Dec., 1889, r. 7.)

(519.)
Application for
relief instead of
audita querela.

30. No proceeding by *audita querela* shall be used, but any party against whom judgment has been given may apply to the court or a judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the court or judge may give such relief and upon such terms as are just. (E. 605.)

(520.)
Equity of red-
emption in
goods may be
seized.

31. Under a writ of execution by which he is instructed to levy on goods and chattels, the sheriff may seize and sell the interest or equity of redemption of the party against whom the execution was issued in any goods, and such sale shall convey whatever interest or equity of redemption such party had in such goods and chattels at the time of the delivery of the writ to the sheriff. (P. A. 268.)

(521.)
Goods, &c.,
when bound by
writ, &c.

32. No writ of execution under which personal property is directed to be levied on shall bind such personal property, or shall prejudice the title to such personal property acquired by any person *bona fide* and for a valuable consideration, before the actual seizure thereof by virtue of such writ; provided such person had not, at the time when he acquired such title, notice that such writ or any other writ by virtue of which the goods of such owner might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff. (P. A. 269.)

33. Current gold and silver coin may be taken in execution, and may be paid to the creditor as money collected. Provincial debentures and notes, and bank notes, and all bills or evidences of debt issued by any corporation, and circulated as money, may be taken in execution, and paid to the creditor at their par value as money collected, if he will accept them; otherwise they shall be sold as other chattels. (P. A. 270.)

**Order XL.
rr. 33—37.**

(522.)
Coin, &c., may
be taken.

34. The sheriff may seize and take in execution any money or bank notes (including any surplus of a former execution against the defendant), cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money belonging to the person against whose effects the writ of execution has issued; and the sheriff shall hold any such cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money as a security or securities for the amount by the indorsement on the writ directed to be levied, or so much thereof as has not been otherwise levied or raised; and the sheriff shall pay and assign them to the plaintiff at the sum actually due on and secured by them respectively if he will accept them; otherwise he may sue in his own name for the sums due thereon and secured thereby, when the time of payment thereon has arrived. (P. A. 271.)

(523.)
Bank notes, &c.,
may be taken
under writ.

35. The transfer to the plaintiff of such cheques, bills of exchange, promissory notes, bonds, mortgages, specialties, or other securities for money, or the payment of the same to the sheriff with or without suit, or the recovery and levying execution against the party so liable on the securities above mentioned, shall discharge him to the extent of such payment, or of such recovery, and levy in execution (as the case may be), from his liability on any such cheque, bill of exchange, promissory note, bond, mortgage, specialty, or other security. (P. A. 272.)

(524.)
Effect of transfer
of securities,
&c.

36. The sheriff shall pay over to the plaintiff or his solicitor the money so recovered, or a sufficient sum to discharge the amount by the writ directed to be levied, less his fees, commission and poundage expenses. (P. A. 273.)

(525.)
Sheriff to pay
over money
recovered.

37. If, after satisfaction of the amount, together with sheriff's fees, commission and expenses, any surplus remains in the hands of the sheriff, the same shall be paid to the party against whom the execution issued. (P. A. 274.)

(526.)
Surplus to be
paid to de-
fendant.

Order XL.**rr. 38-40.**

(527.)
Bond of indem-
nity to Sheriff.

38. No sheriff shall be bound to sue any person liable upon any such cheque, bill of exchange, promissory note, bond, mortgage, specialty, or other security, unless the party at whose instance such execution issued enters into a bond with two sureties to indemnify such sheriff against all costs and expenses to be incurred in such action, or to which he may become liable in consequence thereof; and the expense of such bond may be deducted from any money recovered in such action. (P. A. 275.)

(528.)
Sheriff to make
return with writ.

39. The sheriff shall, in returning every execution, state specially his doings thereunder, and where property has been taken, give a specific account thereof, and of the sales of the same, with an account of his fees and charges against the same. (P. A. 276.)

(529.)
Articles ex-
empted from
levy.

40. The following goods and chattels shall be exempt from seizure under any writ of execution, namely:

(a.) The necessary wearing apparel, beds, bedding and bedsteads of the debtor and his family.

(b.) One stove and pipe therefor, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs, six knives, six forks, six plates, six teacups, six saucers, one shovel, one table, six chairs, one milk-jug, one teapot, six spoons, one spinning wheel, one weaving loom, one sewing machine if in ordinary domestic use, ten volumes of religious books, one water bucket, one axe, one saw, and such fishing nets as are in common use, the value of such nets not to exceed twenty dollars.

(c.) All necessary fuel, meat, fish, flour, and vegetables actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of forty dollars.

(d.) One cow, two sheep, and one hog, and food therefor for thirty days.

(e.) Tools and implements of, or chattels ordinarily used in, the debtor's occupation, to the value of thirty dollars.

Not exempt in
certain cases.

But nothing in this rule contained shall exempt any article enumerated in (b.) (c.) (d.) and (e.) from seizure in satisfaction of a debt contracted for such identical article. (1885, c. 34, ss. 1, 2.)

41. No writ of execution shall bind the goods of the defendant but from the time the writ is delivered to the sheriff to be executed; and the sheriff shall, upon the receipt of the writ, indorse thereon the time at which the same was received by him. (P. A. 278.)

**Order XL.
rr. 41-46.**

(530.)
Writ, when to
bind goods.

42. A written order signed by the solicitor by whom any writ of execution has been issued, or by the party at whose instance such execution issued, shall justify the sheriff in discharging any person held in custody under such execution. The order of the solicitor shall not suffice for that purpose where the party for whom such solicitor professes to act has given to the sheriff written notice to the contrary, and shall not in any case be a satisfaction of the debt unless made by the authority of the creditor. (P. A. 280.)

(531.)

Discharge of
defendant from
custody.

* * * * *

2.—Discovery in aid of Execution.

44. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the court or a judge for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a judge or an officer of the court as the court or judge appoints; and the court or judge may make an order for the attendance and examination of such debtor, or of any other person, and for the production of any books or documents. (E. 610.)

(533.)

Examination of
judgment
debtor.

45. In case of any judgment or order other than for the recovery or payment of money, if any difficulty arises in or about the execution or enforcement thereof, any party interested may apply to the court or a judge, and the court or judge may make such order thereon for the attendance and examination of any party or otherwise as is just. (E. 611.)

(534.)

Judgments
other than for
money.

46. Any person liable to be examined under the next two preceding rules may be compelled to attend and testify, and to produce books and documents, in the same manner, and subject to the same rules of examination, and the same consequences of neglecting to attend, or refusing to disclose the matters in respect to which he is examined, as in the case of a witness on a trial. (O.)1897), r. 905.

(535.)

Compelling at-
tendance and
production.

Order XL.**r. 47.**

(536.)

Costs.

47. The costs of any application under the next three preceding rules, and of any proceedings arising from or incidental thereto, shall be in the discretion of the court or a judge, or in the discretion of the officer of the court before whom such examination is taken, if the court or a judge so directs. (E. 612.)

Order XLI.**rr. 1-4.****ORDER XLI.**

WRITS OF EXECUTION AND SEQUESTRATION.

(537.)

Form and effect.

1. Writs of execution, in the forms in use immediately preceding the coming into force of these rules, and in the forms in appendix H, shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed. (E. 613.)

(538.)

Writ of sequestration.

2. Where any person is by any judgment or order directed to pay money into court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order may at the expiration of the time limited for the performance thereof, without obtaining any order for that purpose, issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the like effect, as nearly as may be, as a writ of sequestration in Chancery had in England before the commencement of the English Judicature Act, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the Court of Chancery, as nearly as may be. (E. 618.)

Effect.

(539.)

No *subpœna* for costs.

3. No *subpœna* for the payment of costs, and, unless by leave of the court or a judge, no sequestration to enforce such payment, shall be issued. (E. 619.)

(540.)

No *venditioni exponas* necessary.

4. Where, by virtue of any writ of execution, goods or other property have been seized but not sold, no writ of *venditioni exponas* need be issued, but the officer may proceed to sell such goods or other property, although the writ of execution has expired. (R. S., c. 104, Or. 41, r. 4.)

ORDER XLII.

Order XLII.
rr. 1-2.

ATTACHMENT.

1. A writ of attachment against the person shall have the same effect as heretofore. (E. 620.) ^(541.) Effect of attachment.

2. No such writ of attachment shall be issued without the leave of the court or a judge, to be applied for on notice to the party against whom the attachment is to be issued. (E. 621.) ^(542.) Leave to be obtained.

ORDER XLIII.

Order XLIII.
rr. 1-3.

ATTACHMENT OF DEBTS.

1. The court or a judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor, shall be attached to answer the judgment or order; and by the same, or any subsequent order, it may be ordered that the garnishee shall appear before the court or a judge or an officer of the court, as such court or judge appoints, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as is sufficient to satisfy the judgment or order. (E. 622.) ^(543.) Order for attachment of debts.

2. Service of an order that debts due or accruing to a debtor liable under a judgment or order shall be attached, or notice thereof to the garnishee, in such manner as the court or a judge directs, shall bind such debts in the hands of the garnishee. (E. 623.) ^(544.) Effect of garnishee order.

3. If the garnishee does not forthwith pay into court the amount due from him to the debtor liable under a judgment or order, or an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the court or a judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from ^(545.) Order for execution against garnishee.

Order XLIII. such garnishee, or so much thereof as is sufficient to satisfy the judgment or order. (E. 624.)
rr. 4-8.

(546.)
 Ascertaining
 disputed liab-
 ility of garni-
 shees

4. If the garnishee disputes his liability, the court or judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined. (E. 625.)

(547.)
 Order for third
 person to
 appear.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the court or a judge may order such third person to appear, and state the nature and particulars of his claim upon such debt. (E. 626.)

(548.)
 Decision as to
 third persons.

6. After hearing the allegations of any third-person under such order, as in the next preceding rule mentioned, and of any other person whom by the same or any subsequent order the court or a judge orders to appear, or if such third person does not appear when ordered, the court or judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding rules of this Order, and may bar the claim of such third person, or may make such other order as such court or judge thinks fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the court or judge thinks just and reasonable. (E. 627.)

(549.)
 Effect of pay-
 ment by garni-
 shee.

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding is set aside, or the judgment or order reversed. (E. 628.)

(549a.)
 Attachment of
 wages of ser-
 vant, &c., in
 certain cases.

7A. No wages of any servant, laborer or workman shall be attached, unless the amount of such wages exceeds forty dollars, and such attachment shall only bind the surplus of such wages over and above the sum of forty dollars. (1895, c. 27, s. 1.)

(550.)
 Record of at-
 tachments.

8. There shall be kept by the prothonotary a debt attachment book, and in such book entries shall be made of every attachment and the proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein

may be taken by any person upon application. (E. Order XLIII. 629.) r. 9.

9. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the court or a judge, but the party obtaining the order for attachment shall not be entitled to any costs if the amount attached does not exceed thirty dollars. (E. 630 and S. C. R., April 11, 1890.) Costs. (551.)

ORDER XLIV.

Order XLIV.
rr. 1-3.

ARREST OF DEFENDANT BEFORE FINAL JUDGMENT.

1. Where the plaintiff in any action in which if it had been brought before the first day of October, A. D. 1884, the defendant would have been liable to arrest, by affidavit of himself or some other person, proves to the satisfaction of a judge or of a commissioner that the plaintiff has a good cause of action against the defendant to the amount of twenty dollars or upwards, and that the deponent has probable cause for believing, and does believe, that the defendant, unless he is arrested, is about to leave the province, and that he believes that unless the defendant is forthwith arrested the debt will be lost, such judge or commissioner may, without requiring in such affidavit any statement of the ground for such belief, make an order directing that such defendant shall be arrested and imprisoned until final judgment in the action, and, if such final judgment is against him, until the expiration of thirty days thereafter, unless he sooner gives the prescribed security, not exceeding the amount sworn to, and with forty dollars for costs, that he will not, without leave of the court or judge, go out of the province until final judgment in the action, and, if such final judgment is against him, until the expiration of thirty days thereafter. (R. S., c. 104, Or. 44, r. 1.) (552.)
Arrest of defendant about to leave the province.

2. An order to arrest may be in form number 28, in appendix K, or to the like effect, and shall be made upon affidavit and *ex parte*. It shall be sealed by the prothonotary and shall then be deemed to be issued. (R. S., c. 104, Or. 44, r. 2 part.) (553.)
Form of order.

3. The defendant may, at any time after arrest, apply to rescind or vary the order, or to be discharged from custody, or for such other relief as is just. Such application may be made to the judge or commissioner (554.)
Application by defendant for relief.

Order XLIV.
PP. 4-8.

who made the order, or to any judge, or to the court, and may be made to the court or to a judge notwithstanding a previous application to the commissioner, and notwithstanding such commissioner has either partly given or refused relief in the premises. If the plaintiff is dissatisfied with any order made by a commissioner on such application, he may apply to the court or a judge to rescind or vary the same. The costs of every proceeding shall be in the discretion of the commissioner, judge, or court. (E. 1030.)

(555.)
 Concurrent
 orders.

4. Concurrent orders may be issued for arrest in different counties. (E. 1031.)

(556.)
 Security on
 release.

5. (1.) The security to be given by the defendant may be a deposit in court of the amount mentioned in the order or a bond to the sheriff by the defendant and two sufficient sureties (or, with leave of a judge, either one surety or more than two), or, with the plaintiff's consent, any other form of security. The bond may be in the form in appendix K, with such variation as circumstances require.

(2.) Immediately upon receiving such bond the sheriff shall notify the plaintiff or his solicitor of the names and addresses of the sureties. (E. 1032.)

(557.)
 Security subject
 to order.

6. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the court or a judge. (E. 1033.)

(558.)
 Costs of arrest.

7. Unless otherwise ordered the costs of and consequent on an order to arrest shall be costs in the cause. (E. 1034.)

(559.)
 Sheriff to arrest
 and hold.

8. (1.) The sheriff shall within one month after the date of such order to arrest, but not afterwards, proceed to arrest such defendant thereon, and shall keep him in custody until he gives the security mentioned in this order.

Sheriff's return
 on order.

(2.) The sheriff shall return the said order to the office of the prothonotary who issued the same, with a statement of his doings thereunder, at the times herein mentioned, that is to say :

(a.) If he has not arrested the defendant within one month after the date of the order to arrest, then at the expiration of such month ; or

(b.) If he has arrested the defendant within such month, then at the expiration of thirty days after final judgment in the action. (R. S., c. 104, Or. 44, r. 8.)

9. When the defendant is described in the order or affidavit by initials, or by a wrong name, or without a Christian name, he shall not by reason thereof be discharged from custody, or entitled to have the security released, if it appears by the affidavit on which the order was granted that due diligence was used to obtain a knowledge of the proper name. (R. S., c. 104, Or. 44, r. 9.)

10. A defendant so arrested shall be entitled to apply for relief under the provisions of "The Indigent Debtors' Act." (R. S., c. 104, Or. 44, r. 11.)

11. The plaintiff may, within four days after receiving particulars of the names and addresses of the sureties, give notice that he objects thereto, stating in the notice the particulars of his objections. In such case the sufficiency of the security shall be determined by a judge, or a commissioner, who may award costs to either party. It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he does so within four days after giving notice of objection the security shall be deemed sufficient. (E. 1032.)

12. (1.) Where a defendant is in custody, or has given security on an order to arrest, and the plaintiff may obtain final judgment against him for default of appearance or default of pleading or other default, and fails to do so, the court or a judge, unless good cause is shown to the contrary, shall discharge the defendant, or if he has given security, shall release the security.

(2.) Where a defendant is in custody, or has given security on an order to arrest, and if when the trial is called on at the next sittings after the arrest the defendant appears and the plaintiff does not proceed to trial, but the court or a judge, for any reason, does not dismiss the action, the defendant shall, nevertheless, unless good cause is shown to the contrary, be discharged, or if he has given security, such security shall be released. (R. S., c. 104, Or. 44, r. 10 part.)

13. The sheriff shall be liable for taking insufficient security, but he may relieve himself at any time by causing the defendant to be rendered under the order to arrest, and by payment of all costs which have been incurred by the plaintiff in consequence of such security being insufficient. (R. S., c. 104, Or. 44, r. 12 part.)

14. The sheriff shall return the bond, with the order, to the office of the prothonotary who issued the order, with his name endorsed on the bond, which endorsement

Order XLIV.
rr. 9—14.
(560.)
Mienomer.

(561.)
Defendant may
apply under
Indigent Debt-
ors' Act.

(562.)
Sureties, justifi-
cation of.

(563.)
Defendant to be
discharged if
judgment is not
taken.

Defendant to be
discharged if
plaintiff does
not proceed to
trial.

(564.)
Sheriff's lia-
bility and relief.

(565.)
Bond to be re-
turned.

Order XLIV. shall operate as an assignment to the plaintiff of the bond,
r. 15. and the same shall be sufficient to enable the plaintiff to bring an action thereon in his own name against the several parties who have executed the same. (R. S., c. 104, Or. 44, r. 13.)

(566)
 Sureties may
 surrender prin-
 cipal.

15. (1.) The sureties may at any time surrender the defendant to the sheriff who executed the order for arrest, and the sheriff shall receive the principal into his custody and give the sureties a certificate, under his hand and seal of office, of the surrender. (E. 1034.)

(2.) Any judge of the court in which the action is pending, upon proof of due notice to the plaintiff or his solicitor of the surrender, and upon production of the sheriff's certificate thereof, shall order the security to be released, and thereupon the sureties shall be discharged. (O. 1049.)

Order XLV.
rr. 1-2.

ORDER XLV.

REPLEVIN.

(567.)
 Order for de-
 livery instead of
 writ of replevin.

1. No writ of replevin shall hereafter be issued, but in any action, commenced as prescribed by Order II, rule 1, brought for the recovery of any personal property, and claiming, whether alone, or with any other claim, that such property was unlawfully taken, or is unlawfully detained, the plaintiff may, at any time after the issue of the writ of summons; obtain from the prothonotary an order for the delivery of the property to him, on his complying with the rules hereinafter contained in this Order. Such order for delivery shall be in the form No. 49 in appendix K, with such variations as circumstances require, and shall be signed and sealed by the prothonotary, and shall have the same force and effect as the writ of replevin had previous to the first day of October, A.D. 1884. (R. S., c. 104, Or. 45, r. 1.)

(568.)
 Affidavit to be
 filed before
 issue of order.

2. No order to replevy, except where the property sought to be replevied has been distrained for rent or damage feasant, shall issue, unless the party applying therefor, or his agent, makes and files an affidavit, which may be in the form in appendix K, No. 50, or to the like effect, therein stating:—

(a.) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, and that it is unjustly detained from him, and describing the property, and,

(b.) The value thereof to the best of his belief.

Order XLV.
rr. 3-7.

Such description of the property, and the value thereof, shall be stated in the order. (P. A. 331.)

3. A copy of such order shall be served on the defendant personally, or, if he cannot be found, left at his usual or last place of abode, with his wife or some other grown person, being a member of his family or household. (P. A. 332.)

(569.)
Service of order.

4. The sheriff shall proceed under such order in like manner as the sheriff proceeded under a writ of replevin previous to the first day of October, A.D. 1884. He shall not serve a copy thereof until he has replevied the property, or some part of the property therein mentioned if he cannot replevy the whole, in consequence of the defendant having removed the same out of the county, or because the same is not in the possession of the defendant, or of any person for him. (P. A. 333.)

(570.)
Sheriff's duty on receipt of order.

5. Before the sheriff replevies he shall take a bond in double the value of the property to be replevied, as stated in the order. The bond may be assigned to the defendant by the sheriff indorsing his name thereon, and such indorsement shall enable such defendant to bring action thereon in his own name against the parties who have executed it. The bond may be in the form No. 51 in appendix K, with such variations as circumstances require. (P. A. 333.)

(571.)
Bond to sheriff.

6. Where the property to be replevied, or any part thereof, is secured or concealed in any dwelling-house or other building or enclosure of the defendant, or of any other person holding the same for him, and the sheriff publicly demands from the owner or occupant of such premises delivery of the property to be replevied, and the same is not delivered to him within twenty-four hours after such demand, he shall, if necessary, break open such house, building or enclosure, for the purpose of replevying such property, or any part thereof, and shall replevy the same according to the order. (P. A. 334.)

(572.)
Where property is concealed building may be broken open by sheriff after demand.

7. If the property to be replevied, or any part thereof, is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and the sheriff demands from the defendant or such other person delivery thereof, and delivery is neglected or refused, he shall, if necessary, search and examine the person and premises of the defendant, or of such other person, for the purpose of

(573.)
Sheriff may search defendant's person and premises where property is concealed.

Order XLV. replevying such property, or any part thereof, and shall
rr. 8-10. replevy the same according to the order. (P. A. 335.)

(574.)
 Return, what to
 contain.

8. The sheriff shall return the order to the prothonotary of the county in which the same was issued, with a statement of his doings thereon, and shall transmit with the return annexed thereto :—

(a.) The names of the sureties who have executed the bond taken from the plaintiff, and the date thereof, and the names of the witnesses thereto.

(b.) The names of the sureties who have executed any bond taken from the defendant on his retention of the property, and the date thereof, and the names of the witnesses thereto.

(c.) The places of residence and additions of such sureties.

(d.) The number, quantity and quality of the articles of property replevied; and, if he has replevied only a portion of the property mentioned in the order, and cannot replevy the residue by reason of the same having been carried out of his county by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state the articles which he cannot replevy, and the reason why not. (P. A. 336.)

(575.)
 Defendant may
 retain possession
 on giving
 security.

9. (1.) Notwithstanding the issue of an order to replevy, the defendant, or his agent, except in cases of distress for rent or damage feasant, may retain possession of the property contained therein, if he gives security to the sheriff in the form number 52 in appendix K, with such variations as circumstances require.

Security may be
 assigned by
 Sheriff's in-
 dorsement.

(2.) Such security, given either by the plaintiff or defendant, shall be assigned, on request, to the party entitled to the benefit thereof, by the sheriff indorsing his name thereon, and such indorsement shall be sufficient to enable such party to bring action thereon in his own name against the several parties who have executed such security. (P. A. 343.)

ORDER XLVI.

Order XLVI.

rr. 1-5.

ACTIONS AGAINST ABSCONDING OR ABSENT DEBTORS.

1.—Attachment.

1. In actions against persons absconding or absent out of the province, the writ of summons shall be in the usual form, but may describe the defendant as absconding or absent out of the province. A copy of the writ of summons shall be left at the last place of defendant's abode, or if he had no place of abode in the province, at the last place in which he carried on business. (R. S., c. 104, O. 46, r. 1.)

(576.)

Writ to state defendant is absconding, &c.

2. At or after the commencement of the action the plaintiff may sue out a writ of attachment to take property, on an affidavit of himself or of his agent, showing a cause of action for twenty dollars or upwards, stating the amount of debt due or damage sustained, and stating that the defendant is absconding or absent out of the province, and the sum so sworn to shall be indorsed on the writ of attachment. (R. S., c. 104, Or. 46, r. 2.)

(577.)

Attachment, how issued.

3. The sheriff to whom a writ of attachment is directed shall levy for the amount indorsed on the writ, with one hundred and twenty dollars for probable costs in actions to recover upwards of eighty dollars, and twenty-eight dollars in actions for less. (R. S., 4th ser., c. 97, s. 4.)

(578.)

Amount of levy.

4. (1.) Where goods are exhibited to the sheriff as the property of the absconding or absent debtor, they shall be valued by two appraisers, who shall be sworn before the sheriff, or any other person competent to administer an oath, to make a true appraisement, and upon an appraisement being made under their hands, the sheriff shall retain such part of the goods as is sufficient to respond the sum sworn to, and probable costs, as aforesaid.

(579.)

Goods exhibited to be appraised before levy.

(2.) The defendant's personal property shall not be bound by the writ of attachment until a levy is made. (R. S., 4th ser., c. 97, s. 5.)

Attachment binds from levy.

5. Where the goods consist of stock, or are shown upon affidavit to be of a perishable nature, or likely to injure from keeping, and the agent of the debtor, if any, does not, within three days after notice of the appraisement, give security for the value, a judge may in his discretion cause the same to be sold at public auction, and the proceeds thereof shall be retained by the sheriff, or

(580.)

Perishable goods may be sold by order of court unless security is given.

Order XLVI. paid into court, to respond the judgment. (R. S., 4th
rr. 6-12. ser., c. 97, s. 6.)

2.—*Subsequent Attachers.*

(581.)
 Party interested
 may contest
 attachment.

6. Where any person has any interest, as a subsequent attacher or otherwise, in any real property, goods or credits levied upon under a writ of attachment, he may dispute the validity and effect of such writ of attachment, on the ground that the sum claimed was not justly due, or that it was not payable when the action was commenced. (R. S., 4th ser., c. 97, s. 7.)

(582.)
 Shall apply to
 court on
 affidavit.

7. The person objecting to the attachment may apply to the court or a judge to set it aside, upon an affidavit, setting out the facts and circumstances on which the application is made, and also the interest of the applicant in the property levied upon. (R. S., 4th ser., c. 97, s. 8.)

(583.)
 Court may direct
 trial and make
 further orders

8. Upon hearing the application the court or judge may direct a trial of any question of fact arising on the inquiry: and if it appears that the sum claimed in the action, or any part of it, is not justly due, or was not payable when the action was commenced, the court or judge shall order the attachment therein made to be set aside in whole or in part, as justice requires, but the order shall have no other effect in such suit. (R. S., 4th ser., c. 97, s. 9.)

(584.)
 Proceedings in
 prior suit to
 have no effect

9. The proceedings between the two adverse claimants upon such application shall not be affected by any defence or other act of the defendant in the action, nor by any judgment that is recovered therein against the defendant. (R. S., 4th ser., c. 97, s. 10.)

(585.)
 Court may order
 security for
 costs, &c

10. The court or judge may, upon every such application, direct such security to be given for costs, and, upon any decision thereon, may award such costs to either claimant as appears just and reasonable. (R. S., 4th ser., c. 97, s. 11.)

3.—*Assessment of Damages.*

(586.)
 Assessment

11. If the defendant does not appear within six months from the attachment of property or service of an agent, unless a later appearance and defence are allowed by the court or a judge, the debt or damage may be assessed before a judge, or in such mode as he thinks fit. (R. S., 4th ser., c. 97, s. 13.)

(587.)
 No trial before
 attachment, or
 proof of agent
 having credits.

12. The plaintiff shall not proceed to judgment in any action against an absconding or absent debtor who has not appeared in such action unless the defendant's

real property or goods have been attached, or until an agent or trustee has admitted, or been proved, to have goods or credits of such defendant in his possession or under his control. (R. S., 4th ser., c. 97, s. 24.)

Order XLVI.
rr. 13-18.

13. The court or a judge may order a new trial, or may postpone judgment for a further time to allow the defendant a further opportunity to defend, and may direct all proper notices to be given. (R. S., 4th ser., c. 97, s. 14.)

(588.)
New trial or
postponement.

4.—Summons to Agent.

14. If at any time after the commencement of the action, the plaintiff or his agent makes an affidavit of belief that any third person has goods, credits, or effects of the defendant in his possession, or under his control, a summons shall be issued to bring in such third person, hereinafter called the agent. (R. S., 4th ser., c. 97, s. 18.)

(589.)
Summons for
agent.

15. The service of such summons on the agent shall bind all the goods, credits, or effects then in his possession, or under his control, to the amount indorsed on the writ, with one hundred and twenty dollars for probable costs. (R. S., 4th ser., c. 97, s. 19.)

(590.)
Service of to
bind goods,
credits, &c.

16. Any person summoned as an agent shall, within fifteen days after he is served with the summons, file with the prothonotary of the Supreme Court for the county in which he resides a declaration disclosing what goods, credits, or effects, if any, of the defendant were, at the time of the service of such summons upon him, in his possession, or under his control, and shall serve the plaintiff or his solicitor with a copy thereof. (R. S., 4th ser., c. 97, s. 20, part.)

(591.)
Agent's declara-
tion, and ser-
vice of.

17. Any person so summoned shall, upon notice to that effect, appear before the court or a judge in the county in which he resides for personal examination as to the goods, credits and effects of the defendant which are in his possession or under his control, but he shall not be required to appear for personal examination, except on notice to that effect, and in the county in which he resides, either before the judge or the court at any sittings.. (R. S., 4th ser., c. 97, s. 20, part.)

(592.)
Examination of
agent as to
goods, credits,
&c.

18. Where a person summoned as agent, files a declaration under his hand that he had not, at the time the summons was served upon him, any goods, credits or effects of the defendant in his possession, or under his

(593.)
Discharged with
costs where no
goods, &c.

Order XLVI.
rr. 19-20.

control, and if required submits to an examination upon oath, satisfactory to the court or a judge, such agent shall be discharged and be entitled to his reasonable costs, to be taxed and allowed, besides his fees for travel and attendance, as in case of a witness, and shall be entitled to issue an execution against the plaintiff for the amount of such costs and fees. (R. S., 4th ser., c. 97, s. 21.)

(591.)
Agent not filing,
or disclosing
guilty of con-
tempt.

19. If any person summoned as an agent, fails to file a declaration, and to disclose upon oath, if required, the amount of the goods, credits and effects, if any, of the defendant in his possession, or under his control, at the time the summons was served upon him, or fails to acknowledge that he has sufficient in his hands to respond the judgment, the court or a judge may deal with him as for a contempt; and he shall also be liable to pay to the plaintiff his costs if the court or judge so orders. (R. S., 4th ser., c. 97, s. 22.)

(594a.)
Issue ordered
upon examina-
tion.

19A. The court or judge, upon any such examination, may order that any issue or question necessary for determining the matter of the inquiry be tried or determined in any manner in which any issue or question in an action may be tried or determined.

(594b.)
Claim of third
person.

19B. Whenever, in proceedings against an agent, under this order, it is suggested by the agent that the goods, credits, or effects sought to be attached, belong to some third person, or that any person has a claim, lien or charge upon them, the court or a judge may order such third person to appear and state the nature and particulars of his ownership, claim, lien or charge.

(594c.)
Issue to deter-
mine.

19C. After hearing the allegations of any third person under such order, and of any other person whom by the same or any subsequent order the court or judge orders to appear, or in case of such third person not appearing when ordered, the court or judge may order any issue or question to be tried or determined necessary for ascertaining the question of such ownership, claim, lien or charge, and may bar the claim of such third person, or make such other order as such court or judge thinks fit, upon such terms in all cases with respect to the lien or charge, if any, of such third person, and to costs, as the court or judge thinks just and reasonable.

(594d.)
Execution
against agent.

20. After judgment recovered against an absconding or absent debtor, the court or judge may grant execution against any agent who has been summoned and proved to have goods, credits, or effects in his hands for such amount, and on such terms as the court or judge approves,

allowing the agent his reasonable costs and other just allowances. Notice of the application for leave to issue execution shall be given to the agent. (R. S., 4th ser., c. 97, s. 15.)

Order XLVI.
rr. 21-24.

5.—*Security for Release of Property.*

21. If the defendant, or his agent, desires to relieve the property from the attachment, he shall give such security to respond the judgment, and submit to such terms as the court or a judge deems right. (R. S., 4th ser., c. 96, s. 23.)

(596.)
Security to obtain release from attachment.

6.—*Security on Execution.*

22. No execution shall issue against any person sued as an absconding or absent debtor, and who has not been served with the writ of summons or appeared, until the plaintiff has given security, to the satisfaction of the court or a judge, for the payment of all moneys levied thereunder, in case of the judgment being reversed or varied. (R. S., 4th ser., c. 97, s. 16.)

(596.)
Security before execution issued

7.—*Rehearing.*

23. Any person against whom a judgment is recovered as an absconding or absent debtor, and who has not appeared in the action, shall be entitled to a rehearing at any time within three years after the date of the judgment. (R. S., 4th ser., c. 97, s. 25.)

(597.)
Rehearing within three years.

8.—*Forms.*

24. The forms of writs of attachment, and of summons for agent, in appendix H, may be used, with such variations as circumstances require.

(598.)
Forms, writs and summons for agent.

ORDER XLVII.

Order XLVII.
r. 1.

ACTIONS AGAINST FOREIGN COMPANIES.

1. Companies or bodies corporate, associated or incorporated out of Nova Scotia, doing business by an agent within this province, may be sued for any cause of action arising in whole or in part therein, by the name whereby they are associated or incorporated, or by the name whereby they are designated by the agent; and service on the agent of the writ of summons by which the action is commenced, shall give the court jurisdiction,

(599.)
Foreign companies doing business by agents,—how sued.

Order XLVII. and proceedings shall be had as when the writ is served on a defendant personally; and any person so served may, at any time before judgment, appear and show that he is not an agent, and upon proof thereof he shall have judgment against the plaintiff for his costs, unless the court or a judge otherwise orders. (R. S., 4th ser., c. 97, s. 26.)

(600.)
Time allowed to
communicate
with principal.

2. The court or a judge may, on sufficient cause shown, allow time for the agent to communicate with his principals. (R. S., 4th ser., c. 97, s. 27.)

(601.)
Goods in hands
of agent liable
for amount of
judgment.

3. If the plaintiff recovers judgment, the agent of the defendant, whether he is the same person who was served with process or not, shall be bound to respond the same out of the assets of the company or body corporate, which then, or at any time afterwards, are in his hands or under his control to be disclosed by the agent on oath, if thereto required, deducting his costs, and fair and legal commission thereon. (R. S., 4th ser., c. 97, s. 28.)

(602.)
Examination of
agent after judg-
ment.

4. After judgment, the agent may be examined on oath before the court or a judge, respecting the assets of the company, or corporate body, in his hands or under his control, at the time of the judgment, or at any time afterwards; and the plaintiff may adduce evidence in explanation or contradiction; and such order shall be made as to justice appertains, and may be enforced against the agent personally. (R. S., 4th ser., c. 97, s. 29.)

(603.)
How plaintiff
may obtain se-
curity before
judgment.

5. At the commencement of the action, the plaintiff, upon an affidavit of himself or his agent, showing that he has a good cause of action against the defendant, may sue out a writ of attachment against the property of the company, or body corporate, and a summons to bring in the agents and debtors of the company or body corporate, or may sue out either process, and by one or in separate and several writs; and the property and effects attached, and also the credits and effects in the hands or under the control of the agents or debtors at the time of service, or at any time afterwards, shall be available to respond the judgment to the amount of the sum sworn to and costs, as in cases under Order XLVI; but the plaintiff may nevertheless proceed against the agent after judgment, as is hereinbefore provided. (R. S., 4th ser., c. 97, s. 30.)

(604.)
Proceedings
where no agents.

6. When such company has ceased to do business within the province, or has no agent within the province, or an agent cannot be discovered, and such company has

property, real or personal, within the province, the proceedings may be taken against the company, as are provided for in the case of absconding or absent debtors, in Order XLVI. (R. S., 4th ser., c. 97, s. 31.)

7. Nothing in this order contained shall prevent the judgment from binding the property of a company or body corporate, or from being enforced by execution, or otherwise, in such manner as is conformable to law or to these rules in other cases. (R. S., 4th ser., c. 97, s. 32.)

(605.)
Other provisions not
abrogated.

ORDER XLVIIA.

Order
XLVIIA.
rr. 1-3.

ACTIONS BY AND AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

1. Any two or more persons claiming or being liable as co-partners and carrying on business within the jurisdiction may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a judge for an order directing a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the judge directs. (E. 648A, E. R. S. C., June 19th, 1891, r. 4.)

(605a)
Actions by and
against firms
within the
jurisdiction.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the court or a judge directs. When the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow, as if they had been named as the plaintiffs in the writ; but all the proceedings shall, nevertheless, continue in the name of the firm. (E., 648B, E. R. S. C., June 1891, r. 4.)

(605b.)
Disclosure of
partners' names.

3. Where persons are sued as partners in the name of their firm, the writ shall be served either upon any one or more of the partners, or at the principal place,

(605c.)
Service.

**Order
XLVIIa.
rr. 4-8.**

within the jurisdiction, of the business of the partnership, upon any person having at the time of service the control or management of the partnership business there; and, subject to these rules, such service shall be deemed good service upon the firm so sued, whether any of the members thereof are out of the jurisdiction or not, and no leave to issue a writ against them shall be necessary: Provided that in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff before the commencement of the action, the writ of summons shall be served upon every person within the jurisdiction sought to be made liable. (E. 648c., E. R. S. C., June 1891, r. 4.)

(605d.)
Notice in what
capacity served.

4. Where a writ is issued against a firm, and is served as directed by rule 3 of this Order, every person upon whom it is served shall be informed by notice in writing given at the time of such service whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters; and in default of such notice, the person served shall be deemed to be served as a partner. (E. 648d., E. R. S. C., June 1891, r. 4.)

(605e.)
Appearance of
partners.

5. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm. (E. 648e., E. R. S. C., June 1891, r. 4.)

(605f.)
No appearance
except by
partners.

6. Where a writ is served under rule 3 of this Order, upon a person having the control or management of the partnership business, no appearance by him shall be necessary unless he is a member of the firm sued. (E. 648f., E. R. S. C., June 1891, r. 4.)

(605g.)
Appearance
under protest of
person served as
partner.

7. Any person served as a partner under rule 3 of this Order, may enter an appearance under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving the firm and obtaining judgment against the firm in default of appearance if no partner has entered an appearance in the ordinary form. (E. 648g., E. R. S. C., June 1891, r. 4.)

(605h.)
Execution of
judgment
against a firm.

8. Where a judgment or order is against a firm, execution may issue:

(a.) Against any property of the partnership within the jurisdiction;

(b.) Against any person who has appeared in his own name under rule 5 or 6 of this Order, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

Order
XLVIII.
rr. 9-11.

(c.) Against any person who has been individually served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the court or a judge for leave so to do; and the court or judge may give such leave if the liability is not disputed, or if such liability is disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined. But except as against any property of the partnership, a judgment against a firm shall not render liable, release, or otherwise affect any member thereof who was out of the jurisdiction when the writ was issued, and who has not appeared to the writ, unless he has been made a party to the action under Order XI, or has been served within the jurisdiction after the writ in the action was issued. (E. 648H., E. R. S. C., June 1891, r. 4.)

9. Debts owing from a firm carrying on business within the jurisdiction may be attached under Order XLIII, although one or more members of such firm are resident abroad: Provided that any person having the control or management of the partnership business or any member of the firm within the jurisdiction is served with the garnishee order. An appearance by any member pursuant to an order shall be a sufficient appearance by the firm. (E. 648I., E. R. S. C., June 1891, r. 4.)

(605i.)
Attachment of
debts owing
from a firm.

10. This Order shall apply to actions between a firm and one or more of its members, and to actions between firms having one or more members in common, provided such firm or firms carry on business within the jurisdiction, but no execution shall be issued in such actions without leave of the court or a judge, and on an application for leave to issue such execution all such accounts and inquiries may be directed to be taken and made; and directions given, as are just. (E. 648K., E. R. S. C., June 1891, r. 4.)

(605k.)
Application of
rules to actions
between co
partners.

11. Any person carrying on business within the jurisdiction in a name or style other than his own name may be sued in such name or style as if it was a firm

(605l.)
Application of
rules to person
trading as a
firm.

**Order
XLVIIA.**

name; and, so far as the nature of the case permits, all rules relating to proceedings against firms shall apply. (E. 648L., E. R. S. C., June 1891, r. 4.)

**Order
XLVIII.
rr. 1-4.****ORDER XLVIII.**

WRIT OF POSSESSION (LAND).

(606.)
Writ to recover
possession of
land.

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the first day of October, A.D. 1884, used in actions of ejectment in the Supreme Court. (E. 644.)

(607.)
Writ may issue
after affidavit.

2. Where by any judgment or order any person therein named is directed to deliver up possession of any land to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order, and that the same has not been obeyed. (E. 645.)

(608.)
Writ for costs
and possession.

3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession, and for the costs, at the election of the successful party. (E. 646.)

(609.)
Effect of writ.

4. A writ of possession shall have the effect of a writ of assistance, as well as of a writ of *habere facias possessionem*. (O. (1897), r. 848.)

**Order XLIX.
r. 1.****ORDER XLIX.**

WRIT OF DELIVERY (CHATTELS).

(610.)
How issued and
enforced.

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the court or a judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and that, if the property cannot be found, and unless the court or a judge otherwise orders, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or, at the option of the plaintiff, that the sheriff cause to be made of the

defendant's goods the assessed value, if any, of the property. (E. 647.)

Order XLIX.
r. 2.

2. A writ of delivery shall be in the form number 1, in appendix H; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest. (E. 648.)

(611.)
Form of writ.

ORDER L.

Order L.
rr. 1-3.

1. INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS, OR INTERIM PRESERVATION OF PROPERTY.

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the court or a judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured. (E. 657.)

(612.)
Order for interim preservation.

1A. Whenever an application is made before trial for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof, it appears to the judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, the judge may make an order for such trial accordingly, and direct when and where such trial shall be held, and in the meantime may make such order as the justice of the case requires. (E. 657A., E. R. S. C., Oct. 1884, r. 11.)

(612a.)
Early trial of cause.

2. The court or a judge, on the application of any party, may make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms, as the court or judge thinks proper, of any goods, wares, or merchandize which are of a perishable nature or likely to be injured from keeping, or which for any other just and sufficient reason it is desirable to have sold at once. (E. 658.)

(613.)
Sale of perishable goods.

3. The court or a judge, upon the application of any party to a cause or matter, and upon such terms as are just, may make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes afore-

(614.)
Order for preservation or inspection.

Order L.
rr. 4—8.

Entry on lands.

Samples.

Experiment.

said may authorize any person to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid may authorize any samples to be taken, or any observation to be made or experiment to be tried, which are necessary or expedient for the purpose of obtaining full information or evidence. (E. 659.)

(615.)
Inspection by judge.

4. Any judge, by whom any cause or matter is heard or tried, with or without a jury, or before whom any cause or matter is brought by way of appeal, may inspect any property or thing concerning which any question arises therein. (E. 660.)

(616.)
Inspection by jury.

5. The provisions of rule 3 of this Order shall apply to inspection by a jury, and in such case the court or a judge may make all such orders upon the sheriff or other person as are necessary to procure the attendance of a special or common jury at such time and place, and in such manner, as they or he thinks fit. (E. 661.)

(617.)
Application for mandamus, injunction, &c.

6. An application for a mandamus, injunction or receiver under the Judicature Act, or an application under rules 2 or 3 of this Order, may be made to the court or a judge by any party. If the application is by the plaintiff for a mandamus, injunction or receiver, it may be made either *ex parte* or upon notice, and if for an order under rules 2 or 3 of this Order it may be made upon notice to the defendant, at any time after the issue of the writ of summons, and if it is by any other party, then upon notice to the plaintiff, and at any time after appearance by the party making the application. (E. 662.)

(618.)
Application for order for preservation of property.

7. An application for an order under rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there are no pleadings, at any time after his right thereto is made to appear by affidavit or otherwise to the satisfaction of the court or a judge. (E. 663.)

(619.)
Amount of lien claimed may be paid into court.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover, specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the court or a judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there are no pleadings, appears by affidavit or otherwise to the satisfaction of such court or judge, order that the party claiming to recover the pro-

party be at liberty to pay into court, to abide the event of the action, the amount of money in respect to which the lien or security is claimed, and such further sum (if any) for interest and costs as such court or judge directs, and that, upon such payment into court being made, the property claimed be given up to the party claiming it. (E. 664.)

Order L.
rr. 9-13.

9. Where any real or personal property forms the subject of any proceedings, and the court or a judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the court or judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real property, or a part of the personal property, or the whole or part of the income thereof, up to such time as the court or judge directs. (E. 665.)

(620.)
Income may be appropriated.

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the court or a judge otherwise directs. (E. 666.)

(621.)
Conduct of sale, under will, &c.

11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction formerly had. (E. 667.)

(622.)
No writ of injunction.

12. In any cause or matter in which an injunction has been, or might have been, claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the court or a judge may grant the injunction, either upon or without terms, as is just. (E. 668.)

(623.)
Restraining repetition of wrongful act.

2. COMPOUNDING PENAL ACTIONS.

13. Leave to compound a penal action shall not be given in cases in which any part of the penalty goes to the Crown, unless notice has first been given to the proper officer; but in other cases it may be given without notice to any officer. (E. 669.)

(624.)
Leave to compound penal action.

**Order L.
rr. 14-18.**

(625.)
Order to compound penal action.

(626.)
Appropriation of penalty.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the court has given him leave to compound the action. (E. 670.)

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be applied as the penalty would have been, if enforced. (E. 671.)

3. RECEIVERS.

(626a.)
Appointment of receiver by way of equitable execution.

15A. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the court or a judge, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if they or he so thinks fit, direct any inquiries on these or other matters before making the appointment. (E. 671A., E. R. S. C., Oct., 1884, r. 12.)

(627.)
Security by receiver.

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the court or a judge and taken before a person authorized to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the court or judge directs, and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the form No. 19 in appendix L, unless the court or a judge otherwise orders. (E. 672.)

Allowance.
Form of security.

(628.)
Adjournment to chambers.

17. Where any judgment or order is pronounced or made in court, appointing a person therein named to be receiver, the court or a judge may adjourn to chambers the cause or matter then pending, in order that the person named as receiver may give security as in the next preceding rule mentioned, and may thereupon direct such judgment or order to be drawn up. (E. 673.)

(629.)
Regulations as to receivers' accounts.

18. When a receiver is appointed with a direction that he shall pass accounts, the court or judge shall fix the days upon which he shall (annually, or at longer or shorter periods,) file and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so filed, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver who neglects to file and pass his

Penalty for neglect.

Order L.
rr. 19-23.

accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the judge before whom any such receiver is to account, or the judge who has cognizance of the matter for the time being, may, from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he thinks fit, charge him with interest at the rate of seven per cent. per annum upon the balances so neglected to be paid by him during the time the same appear to have remained in the hands of any such receiver. (E. 674.)

19. 'Receivers' accounts shall be in the form No. 13, ^(630.) in appendix L, with such variations as circumstances ^{Form of accounts.} require. (E. 675.)

20. Every receiver shall file his account, together ^(631.) with an affidavit verifying the same in the form No. 20, ^{Passage of accounts.} in appendix L, with such variations as circumstances require. An appointment shall thereupon be obtained by the plaintiff, or person having the conduct of the cause, for the purpose of passing such account. (E. 676.)

21. If any receiver fails to file any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at chambers to show cause why such account or affidavit has not been filed, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as are proper, including the discharge of any receiver and appointment of another, and payment of costs may be given at chambers, or by adjournment into court. ^(632.) Receiver in default. (E. 677.)

22. When a receivership has been completed, the ^(633.) book containing the accounts shall be deposited in the ^{Receiver's book, deposit of.} prothonotary's office. (E. 678.)

1. LIQUIDATORS AND GUARDIANS.

23. The accounts of liquidators and of guardians ^(634.) shall be passed and verified in the same manner as is by ^{Liquidator's account.} this order directed as to receivers' accounts. (E. 679, 679A., E. R. S. C., Oct., 1884, r. 14.) (E. 679.)

Order LI.

P. I.

ORDER LI.

SALES BY THE COURT.

1.—Lunatics' and Infants' Estates.

(635.)
Sale, &c., of land
of infants' and
lunatics.

1. (1.) A lunatic or person of unsound mind, or an infant, entitled to any estate of freehold, or for a term of years in any real property, whether in possession or reversion, or otherwise howsoever, may, by his next friend, or guardian, petition the court or a judge for an order to let, sell, mortgage or otherwise dispose of such property, and the court or judge may proceed in a summary manner on affidavits to inquire into the merits of the application.

(2.) If it appears,

Grounds for
sale, &c.

(a.) That such disposal of the property, or any part thereof, is necessary for the support of such lunatic or person of unsound mind, or for the support or education of such infant, or of the infant children of such lunatic or person of unsound mind; or

(b.) That the interests of the lunatic or person of unsound mind, or of such infant, or of the infant children of such lunatic or person of unsound mind, will be substantially promoted by such disposal, on account of any part of such property being exposed to waste or dilapidation, or being wholly unproductive; or

(c.) That there is any other reasonable cause for such disposal,

the court or judge may make an order for the letting for a term of years, or the sale, mortgage, or other disposal of such real property or interest, in such manner and on such terms, and with such restrictions as are deemed expedient.

Sale, &c., made
by guardian, etc.

(3.) Such letting, sale, mortgage or disposal of the real property or interest, shall be made by such next friend, guardian or person appointed by the court or judge.

Proceeds of sale
under order,
how disposed of

(4.) Upon any order for the disposal of any property being made as aforesaid, the court or judge may make such order for the investment, disposal and application of the proceeds of such property, and of the increase and interest arising therefrom, as shall secure the same

for the benefit of such lunatic or person of unsound mind, or of such infant, or the infant children of such lunatic or person of unsound mind. Order LI.
rr. 2—4.

(5.) Unless there is already a lawfully appointed guardian who has given security in due course in respect to such property, such next friend, guardian or person appointed by the court or judge, as the case may be, shall first file a bond to Her Majesty, to be approved of by the court or judge, with such sureties, and containing such terms and conditions as are directed, but in any event containing a condition for the fulfillment of the directions contained in such order. Guardian appointed for sale.

(6.) No letting, sale, mortgage, or other disposal shall in any case be made contrary to any last will, or conveyance, by which such property or interest was devised or conveyed to the lunatic or person of unsound mind, or infant, unless it is necessary for the support and maintenance of such lunatic or person of unsound mind, or of such infant, or of the infant children of such lunatic or person of unsound mind, and such fact shall be expressed in the order. (R. S., c. 104, Or. 51, rr. 1, 3.) Sale, &c., not to be made against provision of will, unless necessary for support

2. Every conveyance by way of lease, sale, or mortgage, made in good faith, and executed by any such next friend, guardian, or person appointed by the court or judge in pursuance of such order, shall be as effectual as if:— (636.)
Conveyance under order as effectual as if made by infant, lunatic, &c.

(a.) The lunatic or person of unsound mind was at the time restored to reason, and had executed such conveyance, or,

(b.) The infant had been at the time, of the age of twenty-one years and had executed such conveyance. (R. S., c. 104, Or. 51, r. 2, part.)

3. It shall not be necessary in the conveyance to recite any part of the proceedings, but such conveyance shall refer to the order and the letting, sale, or other disposal of such property. The person making the sale shall file a report thereof with the prothonotary of the county in which the lands are situated. (R. S., c. 104, Or. 51, r. 2, part.) (637.)
Nature of conveyance.

Report filed.

4. No sale made as aforesaid shall give to any such lunatic or person of unsound mind, or infant, any other or greater interest or estate in the proceeds of such sale than he had in the property so sold. (E. A. 62.) (638.)
Effect of sale.

**Order LI.
rr. 5-9.**

(639.)
Effect of conveyance.

5. Every conveyance purporting to be made under the preceding rules of this Order, shall be *prima facie* evidence that all the proceedings on which the same is founded were rightly had. (E. A. 63.)

2.—Sales in Other Cases.

(640.)
General power to order sale of real estate.

6. If in any cause or matter relating to any real property, in respect to which the court has power to order a sale, it appears necessary or expedient that the real property or any part thereof should be sold, the court or a judge may order the same to be sold, and any party bound by the order and in possession of the property, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as is thereby directed. (E. 680.)

(640a.)
Power to make order for sale in debenture holders' action at any time.

6A. In any action by or on behalf of the holders of debentures or bonds, where such holders of debentures or bonds are entitled to a charge by virtue of the debentures or bonds, or of a trust deed, or otherwise, and the plaintiff is suing on behalf of himself and other holders of debentures or bonds, and where the court or a judge is of opinion that there must eventually be a sale, he may in his discretion direct a sale before judgment, and also after judgment, before all the persons interested are ascertained, whether served or not. (E. 680B., E. R. S. C., Nov., 1893, r. 18.)

(641.)
Title may be referred to counsel.

7. Before any property or interest is put up for sale under a judgment or order, a certificate or abstract of the title shall, unless otherwise ordered, be laid before the court or judge to enable proper directions to be given respecting the conditions of sale, and other matters connected with the sale, and the same may be referred to counsel, approved by the court or judge, for his opinion thereon. (E. 681.)

(642.)
Judge to approve sale, and parties to join.

8. Where a judgment or order is given or made, whether in court or in chambers, directing any property to be sold, the same shall, unless otherwise ordered, be sold, with the approbation of the court or a judge, to the best purchaser that can be got, the same to be allowed by the judge, and all proper parties shall join in the sale and conveyance as the judge directs. (E. 682.)

(643.)
Affidavits as to value.

9. Affidavits for the purpose of enabling the judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so

that the value may not be disclosed by the affidavit when filed. (E. 683.) **Order LL. rr. 10—12.**

3.—*Foreclosure Sale.*

10. If, in any action for foreclosure and sale, the sale of the mortgaged property is sought by a subsequent mortgagee or encumbrancer, or by the mortgagor, or by any persons claiming under them respectively, the court or judge shall not direct any such sale without the consent of the first mortgagee, or the persons claiming under him, except upon such terms as the court or judge thinks fit and proper, which terms may include the deposit of money in court. (E. A. 40.) (644.) Sales of mortgaged property, —how ordered on behalf of subsequent encumbrancers.

10A. (1.) In an action for foreclosure and sale, if the order directs a sale in default of payment, the premises shall be sold upon such default in accordance with the advertisement of sale by the sheriff of the county in which the lands lie, or by such other person as is authorized by the court to make such sale, and such sheriff or person so authorized may execute the deed of the premises to be given to such purchaser. (644a.) Foreclosure sale by sheriff or person appointed.

(2.) If the purchase money is insufficient to pay what is found to be due to the plaintiff for principal and interest and costs, the plaintiff shall be entitled (when the mortgagor is a defendant and such relief has been claimed) to an order for the payment of the deficiency. Judgment for deficiency after foreclosure sale.

(3.) If the purchase money exceeds what is found to be due to the plaintiff, all accounts may be taken, and inquiries made, and costs taxed, and necessary proceedings had, to distribute the surplus among the persons entitled thereto, according to their priorities. Surplus to be distributed.

11. In an action for foreclosure and sale, upon payment by the defendant, or in an action for redemption, upon payment by the plaintiff of the amount found due, the plaintiff or defendant, as the case may be, shall, unless the court or a judge otherwise directs, assign and convey the mortgaged premises in question to the party making the payment, or to whom he appoints, free and clear of all incumbrances created by him, and deliver up all deeds and writings in his custody or power, relating thereto. (O., (1897) r. 758.) (645.) Assignment of property and delivery of documents.

12. Whenever any real property bound by mortgage is situated in adjoining counties, with the boundary line between such counties running through the same, the sheriff of either of such counties may sell such real (646.) Property in adjoining counties.

Order LI. property under order of foreclosure and sale, but subject to such terms and conditions as to the court or a judge seems just. (1880, c. 13, s. 22.)

Order LII.
rr. 1-5.

ORDER LII.

MOTIONS AND OTHER APPLICATIONS.

(647.)
Application to
court or judge
in court to be
by motion.

1. Where by these rules any application is authorized to be made to the court or a judge, such application, if made to the court, or to a judge in court, shall be made by motion. (E. 696.)

(648.)
No rules nisi
in certain cases.

2. No motion or application for a rule *nisi* or order to shew cause shall hereafter be made (a) in any action, or (b) to set aside, remit, or enforce an award, or (c) for attachment, or (d) to answer the matters in an affidavit, or (e) to strike off the rolls, or (f) against a sheriff to pay money levied under an execution. (E. 697.)

(649.)
Notice of
motion.

3. Except where according to the practice existing immediately before the first day of October, A. D. 1884, any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding the next preceding rule, a motion or application may be made for an order to shew cause only, no motion shall be made without previous notice to the parties affected thereby. But the court or a judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the court or judge thinks just; and any party affected by such order may move to set it aside or to vary it. (E. 698.)

Notice dis-
pensed with in
certain cases.

(650.)
Contents of no-
tice in certain
cases.

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion. (E. 699.)

Affidavits.

(651.)
Length of notice

5. Unless the court or a judge gives special leave to the contrary, there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion; provided that in applications to answer the matters in an affidavit, or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before

the time fixed by the notice for hearing the motion. (E. **Order LII.**
700.) **rr. 6-12.**

6. If on the hearing of a motion or other applica- (652.)
tion the court or a judge is of opinion, that any person to Notice not
whom notice has not been given, ought to have or to have served on all
had such notice, the court or judge may either dismiss proper parties.
the motion or application, or adjourn the hearing thereof,
in order that such notice may be given, upon such terms,
if any, as the court or judge thinks fit to impose. (E.
701.)

7. The hearing of any motion or application may (653.)
from time to time be adjourned upon such terms, if any, Adjournment.
as the court or judge thinks fit. (E. 702.)

8. The plaintiff may, without any special leave, (654.)
serve any notice of motion or other notice or any peti- Service on de-
tion or summons upon any defendant, who, having been fendant who has
duly served with a writ of summons to appear, has not not appeared.
appeared within the time limited for that purpose.
(E. 703.)

9. The plaintiff may, by leave of the court or a (655.)
judge to be obtained *ex parte*, serve any notice of motion Service with
upon any defendant along with the writ of summons, or writ, or before
or at any time after service of the writ of summons and time for ap-
before the time limited for the appearance of such pearance.
defendant. (E. 704.)

10. No order shall issue for the return of any writ, (656.)
or order for replevin, or to bring in the body of a person No order for re-
ordered to be attached, arrested or committed; but a turn of writ.
notice from the person issuing the writ, or obtaining the
order for replevin, attachment, arrest, or committal (if
not represented by a solicitor, or from his solicitor, call-
ing upon the sheriff to return such writ, or order, or to
bring in the body within a given time, if not complied
with, shall entitle such person to apply for an order for
the committal of such sheriff. (E. 706.)

11. Where any sheriff, before going out of office, (657.)
arrests any defendant, and renders return of *cepi corpus*, Notice on re-
he may be called upon by a notice, as provided by the tured sheriff.
the next preceding rule, to bring in the body within the time
allowed by law, although he is out of office when such
notice is given. (E. 707.)

12. Every order, if and when drawn up, shall be (658.)
dated the day of the month, and the year, on which the Date of order.
same was made, unless the court or a judge otherwise
directs, and shall take effect accordingly. (E. 708.)

**Order LII.
rr. 13-16.**

(659.)
Certain orders
need not be
drawn up.

13. Where an order is made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave,—

(a.) for the issuing of any writ other than a writ of attachment,

(b.) for the amendment of any writ or pleadings,

(c.) for the filing of any document, or

(d.) for any act to be done by an officer of the court other than a solicitor,

it shall not be necessary to draw up such order, unless the court or a judge otherwise directs; but the production or a note or memorandum of such order, signed by a judge or prothonotary, shall be sufficient authority for such enlargement of time, issuing, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this rule had not been made, have been required to be served with such order. (E. 709.)

(660.)
Statement of
persons to be
served with
petition.

14. At the foot of every petition (not being a petition of course) presented to the court, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof. (E. 711.)

(661.)
Time for hear-
ing a petition.

15. Unless the court or a judge gives leave to the contrary, there shall be at least two clear days between the service, and the day appointed for hearing a petition. (E. 712.)

(662.)
Application for
moneys in
court.

16. (1.) In the case of an application under any statute directing the purchase money of any property sold to be paid into court, any person claiming to be entitled to the money so paid in shall make an affidavit (a) verifying his title, and (b) stating that he is not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof.

(2.) If the petitioner is aware of any such right or claim, he shall in such affidavit state or refer to and except the same. (E. 713.)

ORDER LIII.

Order LIII.
rr. 1-4.

ACTION OF MANDAMUS.

1. The plaintiff, in any action in which he claims a mandamus to command the defendant to fulfil any duty, in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons. (E. 719.) (663.)
Mandamus to be claimed on writ of summons.

2. The indorsement shall be in the form given in section IV, of appendix A, part III. (E. 720.) (661.)
Form of indorsement.

3. If judgment is given for the plaintiff the court or judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as appears to the court or a judge to be just, to perform the duty in question. The court or a judge may also extend the time for the performance of the duty. (E. 721.) (665.)
Power of court.

4. No writ of mandamus shall be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had. (E. 722.) (666.)
Judgment or order instead of writ of mandamus.

ORDER LIV.

Order LIV.
rr. 1-4.

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

1. Every application at chambers not made *ex parte*, shall be made by summons, or on notice. (E. 734.) (678.)
Application to be by notice or summons.

2. Every application for payment or transfer out of court made *ex parte*, and every other application made *ex parte* in which the judge or proper officer thinks fit so to require, shall be made by summons or on notice. (E. 735.) (679.)
Certain applications to be by summons or notice.

3. No summons shall be altered after it is sealed except upon application at chambers. (E. 736.) (680.)
Alteration of summons.

4. An originating summons shall be in the form No. 1A or 1B, appendix K, to these rules, with such variations as circumstances require. It shall be prepared by the applicant or his solicitor, and shall be sealed by the prothonotary, and when so sealed shall be deemed to be issued. The person obtaining the originating summons shall leave a copy thereof with the prothonotary to be filed. (E. 737B., E. R. S. C., Aug. 1894, r. 3.) (680a.)
Originating summons, form of.

4A. The parties served with an originating summons shall, unless otherwise provided, before they are heard, (680b.)
Appearance to originating summons.

Order LIV.
rr. 4b-6.

(680c.)
Notice of time
for attending
originating sum-
mons, and ser-
vice of.

enter appearances and give notice thereof. A party so served may appear at any time before the hearing of the summons. If he appears at any time after the time limited by the summons for appearance he shall not, unless the court or a judge otherwise orders, be entitled to any further time for any purpose, than if he had appeared according to the summons. (E. 737c., E. R. S. C., Aug. 1894, r. 4.)

(681.)
Return day of
summons and
length of ser-
vice.

4B. The day and hour for attendance under an originating summons shall, after appearance, be fixed by notice sealed by the prothonotary and in the form No. 1c, appendix K. The notice shall be served on the defendant or respondent by delivering a copy thereof at the address for service named in the memorandum of appearance of such defendant or respondent not less than four clear days before the return day. The day and hour for the hearing of an *ex parte* summons shall be fixed by the judge in chambers on production of the originating summons. (E. 737d., E. R. S. C., Aug. 1894, r. 5.)

4c. Unless a judge otherwise orders there shall be at least two clear days between the service of a summons (other than an originating summons) or notice of application at chambers, and the making of the application upon such summons or notice: Provided that in case of an application for time only, the summons or notice may be served the day before making the application. (E. 737e., E. R. S. C., Aug. 1894, r. 6.)

(682.)
Persons sum-
moned failing
to attend.

5. Where any of the parties to a summons fails to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the judge may proceed *ex parte*, if, considering the nature of the case, he thinks it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the judge may require such evidence of service as he thinks just. (E. 738.)

(683.)
Matter not to be
re-opened.

6. Where the judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in chambers, unless the judge is satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he is permitted to have such proceeding reconsidered, or make such other order as to such costs, as he thinks just. (E. 739.)

7. Where a proceeding in chambers fails by reason of the non-attendance of any party, and the judge does not think it expedient to proceed *ex parte*, he may order such an amount of costs (if any) as he thinks reasonable to be paid to the party attending by the absent party, or by his solicitor personally. (E. 740.)

Order LIV.
rr. 7-13.
(681.)
Costs.

8. Where any matters in respect of which a summons has been issued is not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as are appointed for the consideration or further consideration of the matter. (E. 741.)

(685.)
Matters not dis-
posed of.

9. In every cause or matter where any party thereto makes any application at chambers, either by way of summons or otherwise, he may include in one and the same application all matters upon which he then desires the order or directions of the court or judge; and upon the hearing of such application the court or judge may make any order and give any directions relative to or consequential on the matter of such application as are just; any such application may, if it is deemed fit, be adjourned from chambers into court, or from court into chambers. (E. 742.)

(686.)
More than one
matter included.

Adjournment
into and from
court.

10. A summons other than an originating summons shall be in the form No. 1 in appendix K, with such variations as circumstances require, and shall be addressed to all the persons on whom it is to be served. (E. 743.)

(687.)
Form of sum-
mons.

11. (1.) A summons shall be prepared by the applicant or his solicitor, and shall be sealed by the prothonotary, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the prothonotary's office a copy thereof, which shall be filed.

(688.)
How issued.

(2.) Such summons may be issued without the leave of a judge. Without leave.

(3.) Except by leave of a judge no affidavit shall be used in support of any application at chambers, unless it has been filed, or a copy thereof served, at least two clear days before the day named for making the application. (E. 744, S. C. R., Oct. 30th, 1893, r. 7.)

Filing or serving
affidavits.

12. The appeal from the decision of a judge at chambers shall be to the court. (E. 756.)

(689.)
Appeal from
judge at
chambers.

13. Every application to be made at chambers shall be entered on a list by the proper officer when a sum-

(690.)
List of sum-
mons.

Order LIV. mons therefor is issued or an entry thereof is filed.
rr. 14-16. (E. 760.)

(691.)
 Order of busi-
 ness.

14. The applications entered in the list for hearing by a judge shall be called on in their order. If when an application is called on neither party appears, it shall be passed over until the list has been gone through. The applications passed over shall then be called on a second time in their order. If neither party appears when an application is so called on it shall be struck out. (E. 761.)

(692.)
 Form of order.

15. An order shall be in the form No. 2 in appendix K, with such variations as circumstances require. It shall be sealed, and marked with the name of the judge by whom it is made. (E. 762.)

(692a.)
 Attendance of
 judge at
 chambers.

16. One of the judges, from time to time selected for that purpose, shall attend at chambers twice a week, or oftener if necessary. He shall not be required to sit in the court *in banco* during the period for which the duty of attending at chambers is assigned to him. (S. C. R., Oct. 30th, 1893, r. 5.)

Order LIV.
rr. 1-4.

ORDER LIV.

DECLARATION ON ORIGINATING SUMMONS.

(692b.)
 Power to make
 declarations on
 summons.

1. Any person claiming to be interested under a deed, will, or other written instrument, may apply by originating summons for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested. (E. 762A., E. R. S. C., Nov. 1893, r. 23.)

(692c.)
 Service.

2. The court or a judge may direct such persons to be served with the summons as they or he thinks fit. (E. 762B., E. R. S. C., Nov. 1893, r. 23.)

(692d.)
 Evidence.

3. The application shall be supported by such evidence as the court or a judge requires. (E. 762C., E. R. S. C., Nov. 1893, r. 23.)

(692e.)
 Discretion of
 court.

4. The court or judge shall not be bound to determine any such question of construction if in their or his opinion it ought not to be determined on originating summons. (E. 762D., E. R. S. C., Nov. 1893, r. 23.)

ORDER LIVB.

Order LIVB.
r. 1.

POWERS OF MASTERS AT CHAMBERS.

1. The judges of the county courts, except the judge of the county court for district No. 1, shall be *ex-officio* masters of the supreme court. Whenever application is made to any such master, he shall, subject to the same appeal as is provided in the case of a decision of a judge at chambers, hear applications, make orders, and transact all such business, and exercise all such authority and jurisdiction in respect to the same, as under the Judicature Act, or the rules or practice of the Supreme Court, may be heard, made, transacted and exercised by a judge of the Supreme Court at chambers, except in respect to the following proceedings and matters, that is to say:—

(692r.)
County judge as master, powers of at chambers same as judge.

- (a.) All matters relating to the liberty of the subject, in which the person is held under any proceeding other than that of a county court, municipal court, stipendiary magistrate, or justice of the peace, or under any proceeding in a criminal matter other than an offence which may be tried by a judge of a county court under the provisions relating to speedy trials. Exceptions.
- (b.) The quashing or reviewing of any proceeding by means of the writ of *certiorari*, but not including the allowance of the writ.
- (c.) The settlement of issues, except by consent.
- (d.) Prohibitions, injunctions, mandamus, and receivers.
- (e.) Awarding of costs, other than the costs of, or relating to, any proceeding before a master, and other than costs which by these rules or by the order of a court or a judge he is authorized to award.
- (f.) Matters provided for in Order LV “Chambers in relation to chancery (or equity) matters,” other than applications for time to plead, or for leave to amend pleadings.
- (g.) Sales of land, other than the land of lunatics or infants, or in actions for foreclosure and sale. (1886, c. 50, ss. 1-4; 1887, c. 10; 1890, c. 11, s. 1; 1893, c. 7, s. 3; 1897, c. 32, s. 1.)

Order LIVB.
rr. 2-3.

2. No master shall exercise the jurisdiction or powers by this Order conferred, except in causes or matters belonging to a prothonotary's office in the district for which he is a county court judge. (1897, c. 32, s. 2.)

3. Every application to vary, rescind, or set aside an order made by a master, shall be made to such master or to the supreme court by way of appeal. (1897, c. 2, s. 3.)

Order LIVC.
rr. 1-3.**ORDER LIVC.**

PROCEEDINGS UNDER THE TRUSTEE ACT.

(692g.)
Application by
summons under
"Trustee Act."

1. Any of the following applications under "The Trustee Act" may be made by an originating summons, or in a pending matter by a summons or notice, that is to say:—

For new trustee.

(a.) An application for the appointment of a new trustee, with or without a vesting or other consequential order.

For vesting
order, new
trustee.

(b.) An application for a vesting order, or other order consequential on the appointment of a new trustee, whether the appointment is made by the court or a judge or out of court.

For vesting
order for sale.

(c.) An application for a vesting order, or other consequential order, in any case where a judgment or order has been given or made for the sale, conveyance, or transfer of any land or stock, or the suing for or recovering any chose in action.

Money in court.

(d.) An application relating to a fund paid into court in any case. (E. 775A.)

(692h.)
Other applica-
tions.

2. Every other application under "The Trustee Act" may be made by petition. (E. 762F.)

(692i.)
Lodgment under
Trustee Act.

3. (1.) Where a trustee desires to make a lodgment in court under "The Trustee Act," he shall make and file an affidavit intituled in the matter of the trust (described so as to be distinguishable) and of "The Trustee Act," and setting forth,—

Affidavit re-
quirements of

(a.) A short description of the trust and of the instrument creating it.

(b.) The names of the persons interested in, and entitled to the money or securities, and their

places of residence, to the best of his knowledge and belief. **Order LVC.
rr. 4-6.**

(c.) His submission to answer all such inquiries, relating to the application of the money or securities paid into court, as the court or judge makes or directs.

(d.) The place where he is to be served with any petition, summons, order, or notice of any proceeding relating to the money or securities.

(2.) The person who has made the lodgment shall forthwith give notice thereof by prepaid letter through the post, to the several persons whose names and places of residence are stated in his affidavit as interested in, or entitled to, the money or securities lodged in court. Notice of to persons interested.

(3.) No petition or summons relating to the money or securities shall be answered or issued unless the petitioner or applicant has named therein a place where he may be served with any petition or summons, or notice of any proceeding or order relating to the money or securities, or the dividends thereof. Place for service by applicant.

(4.) Service of any application in respect to the money or securities shall be made on such persons as the court or judge directs. (E. 762H.) Order for service.

4. Applications to deal with funds lodged in court under "The Trustee Act," shall be intituled in the same manner as the affidavit on which the funds were lodged. (692j.)
Title of application.

5. All other applications under "The Trustee Act," not made in any pending cause or matter, shall be intituled in the matter of the trust (described so as to be distinguishable) and of "The Trustee Act." (692k.)
Title of other matters under Trustee Act.

6. There shall be an appeal from any decision, order, or judgment of a judge under "The Trustee Act." (1888, c. 11, s. 78.) (692l.)
Appeal from orders under Trustee Act.

ORDER LV.

**Order LV.
r. 1.**

CHAMBERS IN RELATION TO CHANCERY (OR EQUITY) MATTERS.

1.—General.

1. The business to be disposed of in chambers shall include the following matters, in addition to the matters which under any other rule or by statute may be disposed of in chambers: (693.)
What shall be done at chambers.

Order LV.**r. 2.**

Payment out
under judgment
declaring rights.

(1.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter, where there has been a judgment or order declaring the rights, or where the title depends only upon proof of the identity or of the birth, marriage, or death of any person ;

Payment out
where funds
under \$4000.

(2.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter, where the cash does not exceed \$4000, or the securities do not exceed \$4000 nominal value ;

Payment of
dividends.

(3.) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise ;

Guardianship of
infants.

(4.) Applications as to guardianship and maintenance or advancement of infants ;

Property man-
agement.

(5.) Applications connected with the management of property ;

Sales.

(6.) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into court and investment of the purchase money ;

Insolvent and
intestate estates.

(7.) Applications for orders on the further consideration of any cause or matter, where the order to be made is for the distribution of assets of a debtor, or for the distribution of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders ;

Pleadings, dis-
covery, &c.

(8.) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter ;

Other matters.

(9.) Such other matters as are deemed proper to be disposed of at chambers. (E. 764.)

2.—*Administrations and Trusts.*

(694.)
Certain ques-
tions to be set-
tled without
administration.

2. The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law of a deceased person,

or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in chambers for such relief of the nature or kind following, as by the summons is specified, and as the circumstances of the case require, (that is to say) the determination, without an administration of the estate or trust, of any of the following questions or matters:—

Order LV.
rr. 3-4.

- (a.) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust*;
- (b.) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others;
- (c.) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts;
- (d.) The payment into court of any money in the hands of the executors or administrators or trustees;
- (e.) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees;
- (f.) The approval of any sale, purchase, compromise, or other transaction;
- (g.) The determination of any question arising in the administration of the estate or trust. (E. 765.)

3. Any of the persons named in the next preceding rule may in like manner apply for and obtain an order for:— (695.)
Applications for
administrations.

- (a.) The administration of the personal property of the deceased;
- (b.) The administration of the real property of the deceased;
- (c.) The administration of the trust. (E. 766.)

4. The persons to be served with the summons under the next two preceding rules in the first instance shall be the following; (that is to say)— (696.)
The persons to
be served with
summons.

A. Where the summons is taken out by an executor or administrator or trustee,—

Order LV.
rr. 5-8.

- (a.) For the determination of any question, under sub-sections (a.), (e.), (f.), or (g.), of rule 2, the persons, or one of the persons, whose rights or interests are sought to be affected;
- (b.) For the determination of any question, under sub-section (b.) of rule 2, any member or alleged member of the class;
- (c.) For the determination of any question, under sub-section (c.) of rule 2, any person interested in taking such accounts;
- (d.) For the determination of any question, under sub-section (d.) of rule 2, any person interested in such money;
- (e.) For relief under sub-section (a.) of rule 3, the residuary legatees, or next of kin, or some of them;
- (f.) For relief under sub-section (b.) of rule 3, the residuary devisees, or heirs, or some of them;
- (g.) For relief under sub-section (c.) of rule 3, the *cestuis que trustent*, or some of them;
- (h.) If there are more than one executor or administrator or trustee, and they do not all concur in taking out the summons, those who do not concur.

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators or trustees. (E. 767.)

(697.)
Directions to
serve others.

5. The court or a judge may direct such other persons to be served with the summons as they or he thinks fit. (E. 768.)

(698.)
Evidence on
application.

6. The application shall be supported by such evidence as the court or a judge requires, and directions may be given as they or he thinks just for the trial of any questions arising thereupon. (E. 769.)

(699.)
Judgment.

7. It shall be lawful for the court or a judge upon such summons to pronounce such judgment as the nature of the case requires. (E. 770.)

(700.)
Special
directions.

8. The court or a judge may give any special directions touching the carriage or execution of the judgment, or the service thereof upon persons not parties, as they or he thinks just. (E. 771.)

9. It shall not be obligatory on the court or a judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order. (E. 772.)

**Order LV.
rr. 9-11.**

(701.)
No administration unless necessary.

9A. Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the court or a judge may, in addition to the powers already existing,—

(701a.)
Orders which may be made on applications for administration or execution of trusts, where no accounts or insufficient accounts have been rendered.

(a.) Order that the application shall stand over for a certain time, and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings:

(b.) When necessary, to prevent proceedings by other creditors, or by persons beneficially interested, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the judge. (E. 772A, E. R. S. C., Dec. 1885, r. 23, and Nov. 1893, r. 25.)

10. The issue of a summons under rule 2 of this Order, shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control is necessarily involved in the particular relief sought. (E. 774.)

(702.)
Savings in favor of trustees, &c.

11. Any trustee, executor, or administrator shall be at liberty, without the institution of a suit, to apply by petition to the court, or by summons upon a written statement to a judge, for opinion, advice, or direction on any question respecting the management or administration of the trust property, or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the court or judge thinks expedient. And it shall be in the power of the court or judge to direct any question arising on any such application to be argued, and to appoint counsel for that purpose where the parties fail and it appears necessary to do so. The trustee, executor, or administrator acting upon the

(703.)
Trustees, &c., may apply to judge for directions.

Proceedings on application.

Effect of directions.

**Order LV.
rr. 12 18.**

Costs.

opinion, advice, or direction given by the court or judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator, in the subject-matter of such application: Provided, nevertheless, that this rule shall not extend to indemnify any trustee, executor, or administrator in respect to any act done in accordance with such opinion, advice, or direction, as aforesaid, if such trustee, executor, or administrator has been guilty of any fraud, or wilful concealment, or misrepresentation, in obtaining such opinion, advice, or direction. The costs of such application, arguments, and counsel, as aforesaid, and the party or funds by or out of which they shall be paid, shall be in the discretion of the court or judge. (E. A. 30.) (1888, c. 11, s. 63; 1889, c. 18, s. 3, part.)

3.—*Assistance of Experts.*

(704.)
Judge in cham-
bers may call
experts.

12. The judge in chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, and other scientific persons, the better to enable any matter at once to be determined, and he may act upon the certificate of any such person. (E. 781.)

* * * * *

5.—*Proceedings relating to Infants.*

(708.)
Evidence on
application for
guardianship.

16. Upon application for the appointment of guardians of infants and allowance for maintenance, the evidence shall show—

(a.) The ages of the infants;

(b.) The nature and amount of the infants' fortunes and incomes;

(c.) What relatives the infants have. (E. 787.)

(709.)
Appointment of
guardian *ad*
litem.

17. At any time during the proceedings at chambers under any judgment or order, the judge may, if he thinks fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition or judicial decision, who has been served with notice of such judgment or order. (E. 789.)

6.—*Summonses to Proceed.*

(710.)
Time for bring-
ing in judgment
directing ac-
counts.

18. Every judgment or order directing accounts or inquiries to be taken or made shall be brought into chambers by the party entitled to prosecute the same within ten days after the same has been passed and entered, and in default thereof any other party to the

cause or matter may bring in the same, and such party shall have the prosecution of such judgment or order unless the judge otherwise directs. (E. 794.) **Order IV.
rr. 19 21a.**

19. Upon a copy of the judgment or order being filed, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be so varied by addition thereto or otherwise as is found necessary. (E. 795.) (711.)
Directions for
proceedings.

*20. Where by a judgment or order a deed is directed to be settled by the judge in chambers if the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the judge thinks fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within eight days after the delivery of such copy, and the proceedings shall be adjourned until after the expiration of the said period of eight days. (E. 796.) (712.)
Settling deed.

21. Where, upon the hearing of the summons to proceed, it appears to the judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the judge may, if he thinks fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service. (E. 797.) (713.)
Service of notice
of judgment
may be dis-
pensd with.

21A. Where service of notice of a judgment or order for accounts and inquiries is dispensed with, the judge may, if he thinks fit, order that the persons as to whom service is dispensed with shall be bound as if served, and they shall be bound accordingly, except where the judgment or order has been obtained by fraud or non-disclosure of material facts. (E. 797A, E. R. S. C., Nov., 1893, r. 26.) (713a.)
Power to bind
persons, service
on whom is dis-
pensd with.

Order LV.**rr. 22-25.**

(714.)
Direction for advertisement for necessary parties.

22. If on the hearing of the summons to proceed it appears that all necessary parties are not parties to the action, or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for filing the accounts, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties have been served, and are bound, or service has been dispensed with, and until directions have been given as to the parties who are to attend on the proceedings. (E. 798.)

(715.)
Procedure at chambers.

23. The course of proceeding in chambers shall ordinarily be the same as the course of proceeding in court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents, and pedigrees, and concise statements shall, if directed, be supplied for the use of the judge, and where so directed, copies shall be handed to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in, unless the judge otherwise directs. (E. 799.)

7.—Summons Book.

(716.)
Entry of summons in summons book.

24. At the time any summons is obtained, an entry thereof shall be made in the summons book, stating the date on which the summons is issued, the name of the cause or matter, and by what party; and shortly for what purpose such summons is obtained, and at what time such summons is returnable. (E. 800.)

8.—Attendance.

(717.)
One solicitor for each class.

25. Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of

his own solicitor of and relating to the proceedings before the judge, with respect to which such nomination has been made, and all such further costs as are occasioned to any of the parties by his being represented by a different solicitor from the solicitor so nominated. (E. 802.)

**Order LV.
rr. 26—31.**

26. Whenever in any proceedings before a judge in chambers the same solicitor is employed for two or more parties, such judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented. (E. 803.)

(718.)
Distinct solicitors may be required.

27. Any of the parties other than those who have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action, either in addition to or in substitution for any of the parties who have been directed to attend. (E. 804.)

(719.)
Those not directed may attend at their own expense.

28. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who have been directed to attend and such of them (if any) as have elected to attend at their own expense. (E. 805.)

(720.)
How order drawn up.

9.—*Advertisements for Creditors and Claimants.*

29. Where a judgment or order is given or made, whether in court or in chambers, directing an account of debts, claims or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time which is fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order. (E. 806.)

(721.)
Those who do not come in after advertisement, excluded.

30. Where an advertisement is required for the purpose of any proceeding in chambers, a peremptory advertisement, and only one, shall be issued, unless for any special reason it is thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as are directed. (E. 807.)

(722.)
Peremptory advertisement.

31. The advertisement for claimants shall be prepared by the party prosecuting the judgment or order, and submitted to the judge for approval. (E. 808, E. R. S. C., Dec. 1885, r. 27.)

(723.)
How prepared.

Order LV.**rr. 32—36.**

(724.)

Advertisement,
form and con-
tents of.

32. Advertisements for creditors and other claimants shall fix a time within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the judge directs, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account and the nature of the security (if any) held by him. Such advertisements shall be in one of the forms Nos. 2 and 3, in appendix L, with such variations as the circumstances of the case require. At the time of directing such advertisement a time shall be fixed for adjudicating on the claims. (E. 809.)

(725.)

Proof of claim
by creditors.

33. It shall not be necessary for a creditor to make any affidavit or attend in support of his claim (except to produce his security), unless he is served with a notice requiring him to do so as hereinafter provided. (E. 811.)

(726.)

Creditor to pro-
duce security.

34. Every creditor shall produce the security (if any) held by him, before the judge, at such time as is specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing (form No. 4 in appendix L,) to be given by the executor or administrator of the deceased, or by such other party as the judge directs, produce all other deeds and documents necessary to substantiate his claim before the judge at his chambers at such time as is specified in such notice. (E. 812.)

(727.)

Penalty for non-
compliance.

35. If any creditor neglects or refuses to comply with the next preceding rule, he shall not be allowed any costs of proving his claim unless the judge otherwise directs. (E. 813.)

(728.)

Executor or ad-
ministrator to
examine claims.

36. The executor or administrator of the deceased, or such other party as the judge directs, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, as far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least seven clear days prior to the time appointed for adjudication, file an affidavit (form No. 5 in appendix L,) to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the judge directs, verifying a list of the claims (form No. 6 in appendix L,) the

**Order LV.
rr. 37-41.**

particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief. (E. 814.)

37. If the judge thinks fit so to direct, the making of the affidavit referred to in the next preceding rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the judge gives. (E. 815.)

(729.)
Making of affidavit may be postponed.

38. Where, on the day appointed for hearing the claims, any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced. (E. 816.)

(730.)
Adjournment for directions.

39. At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the judge may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he thinks fit, and may, if he thinks fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed. (E. 817.)

(731.)
Allowance or disallowance of claims.

40. Notice (form No. 7, in appendix L,) shall be given by the executor or administrator, or such other party as the judge directs, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor of such allowance, and to every such creditor as the judge directs to attend and prove his claim, or such part thereof as is not allowed, by a time to be named in such notice (form No. 8, in appendix L,) not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon has been adjourned, and if any creditor does not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed. (E. 818.)

(732.)
Notices to creditors.

41. After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the judge thinks fit to

(733.)
Exclusion of claims after prescribed time.

**Order LV.
rr. 42-47.**

give special leave, upon application and upon such terms and conditions as to costs and, otherwise as the judge thinks fit. (E. 819.)

(734.)
Costs to credi-
tors proving
claim.

42. A creditor who has come in and established his debt in chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the judge, unless he thinks fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereto, shall be added to the debt so established. (E. 820.)

(735.)
List of allowed
claims.

43. A list of all claims allowed shall, when required by the judge, be made out and filed by the person who examines the claims. (E. 821.)

(736.)
Service of
notices by post.

44. Every notice by this Order required to be given to creditors or other claimants shall, unless the judge otherwise directs, be deemed sufficiently given and served if transmitted by the post prepaid to the creditor or other claimant, to be served according to the address given in the claim sent in by him pursuant to the advertisement, or if such creditor or other claimant has employed a solicitor, to such solicitor according to the address given by him. (E. 823.)

10.—Interest.

(737.)
Interest on judg-
ment or order.

45. Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of six per cent. per annum from the date of the judgment or order. (E. 824.)

(738.)
Interest where
debt does not
bear interest.

46. A creditor whose debt does not carry interest, who comes in and establishes the same before the judge in chambers under a judgment or order of the court or of the judge in chambers, shall be entitled to interest upon his debt at the rate of six per cent. per annum, from the date of the judgment or order, out of any assets which remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest. (E. 825.)

(739.)
Interest on
legacies.

47. Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of five per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment

or rate of interest is directed by the will, and in that case according to the will. (E. 826.)

Order LV.
FF. 47a—47c.

10a.—References.

47A. The judge may direct referees to take such accounts and make such inquiries as usually have been taken and made by the chief clerks in the chancery division in England, and the judge shall give such aid and directions in every such account or inquiry as he thinks fit. (E. 777.)

(739a.)
Referees to
take accounts.

47B. Such referee shall, for the purpose of any proceedings directed to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments, other than acknowledgments by married women, and when so directed by the judge, to examine parties and witnesses either upon interrogatories or *viva voce*, as the judge directs. (E. 778.)

(739b.)
Referees on
taking accounts.

47C. Parties and witnesses summoned to attend before a referee shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the court, or in case of default in attendance, in pursuance of any order of the court or of any writ of *subpoena ad testificandum*, and all persons swearing or affirming before any referee shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein, as if the matters sworn or affirmed had been sworn and affirmed before any other person by law authorized to administer oaths, to take affidavits, and to receive affirmations. (E. 779.)

(739c.)
Duty of persons
summoned to
attend before
referee.

47D. The court or judge may direct any computation of interest, or the apportionment of any fund, to be certified by the referee, and to be acted upon by any person without further order. (E. 780.)

(739d.)
Computation of
interest, &c., to
be acted upon by
any person, &c.

47E. The directions to be given for or touching any proceedings before the referee shall require no particular form, but the result of such proceedings shall be stated in the shape of a concise certificate to the judge, and unless an order to discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the judge. (E. 827.)

(739e.)
Referee's certi-
ficate.

**Order LV.
rr. 47f-47l.**(739f.)
Certificate, how
drawn.

47F. The certificate of the referee shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment, or order, documents, and evidence, or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded. (E. 828.)

(739g.)
Preparation and
settlement of
referee's
certificate.

47G. The certificate shall, when the judge so directs, be prepared by the solicitor of one of the parties, who shall obtain an appointment to settle the certificate and shall give notice of such appointment to the other parties. No summons to settle the certificate of the referee shall hereafter be issued. (E. 828A.)

(739h.)
Form of
certificate.

47H. The certificate of the referee shall be in the form No. 9, in appendix L, with such variations as the circumstances require, and when prepared and settled shall be transcribed in such form, and within such time, as the referee requires, and shall be signed by the referee either then or (if necessary, at an adjournment to be made for the purpose. (E. 829.)

(739i.)
Contents of
certificate in
cases of
accounts.

47I. Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith. (E. 830.)

Transcript.

Filing of
accounts and
transcripts.(739k.)
Taking opinion
of judge.

47K. Any party may, before the proceedings before the referee are concluded, take the opinion of the judge upon any matter arising in the course of the proceedings without any fresh summons for the purpose. (E. 831.)

(739l.)
When certificate
becomes
binding.

47L. Every certificate, with the accounts (if any) to be filed therewith, shall be filed by the referee, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied upon application by summons to be made before the expiration of eight clear days after the filing of the certificate. (E. 832.)

Application to
discharge or
vary it.

47M. The judge may, if the special circumstances of the case require it, upon an application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties. (E. 833.)

Order LV.
rr. 47m—49.
(739m.)
Discharge or
variation of
certificate after
lapse of any
time.

11.—Further Consideration.

48. Where any matter originating in chambers has, at the original or any subsequent hearing, been adjourned for further consideration in chambers, such matter may, after the expiration of eight days, be brought on for further consideration by a summons to be taken out by the party having the conduct of the matter, and, after the expiration of fourteen days, by a summons to be taken out by any other party. Such summons shall be in the form following:—

(740.)
Adjourned
matter, how
brought
forward.

“That this matter, the further consideration whereof was adjourned by the order of the — day of —, 19—, may be further considered,”

and shall be served six clear days before the return: Provided that this rule shall not apply to any matter, the further consideration whereof has, at the original or any subsequent hearing, been adjourned into court. (E. 834.)

12.—Forms, &c.

49. The forms Nos. 10 to 20 in appendix L, shall be used for the respective purposes therein mentioned, with such variations as circumstances require. (E. 837.)

(741.)
Forms.

ORDER LVI.

Order LVI.
r. 1.

INTERPLEADER.

1. Relief by way of interpleader may be granted,—
 - (a.) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect to which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto;
 - (b.) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the court, and claim is made to any money, goods or chattels taken

(742.)
When such
relief allowed.

Sheriff.

Order LVI.
rr. 2-7.

or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued. (E. 850.)

(743.)
Conditions of
relief.

2. The applicant shall satisfy the court or a judge by affidavit or otherwise—

- (a.) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and
- (b.) That the applicant does not collude with any of the claimants; and
- (c.) That the applicant, except where he is a sheriff or other officer charged with the execution of process, by or under the authority of the Supreme Court, who has seized goods, and who has withdrawn from possession in consequence of the execution creditor admitting the claim of the claimant under rule 16 of this Order, is willing to pay or transfer the subject-matter into court or to dispose of it as the court or a judge directs. (E. 851, E. R. S. C., March 1896, r. 2.)

(744.)
Adverse titles
of claimants.

3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin, but are adverse to and independent of one another. (E. 852.)

(745.)
Time for appli-
cation by
defendant.

4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons. (E. 853.)

(746.)
Interpleader
summons.

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them. (E. 854.)

(747.)
Power to stay
proceedings

6. If the application is made by a defendant in an action the court or judge may stay all further proceedings in the action. (E. 855.)

(748.)
Direction of
issue, or that
claimant be
made defendant.

7. If the claimants appear in pursuance of the summons, the court or a judge may order either that any claimant be made a defendant in any action already commenced in respect to the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant. (E. 856.)

8. The court or a judge may, with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as are just. (E. 857.)

**Order LVI.
rr. 8-13.**

(749.)

Summary
adjudication by
consent.

9. Where the question is a question of law, and the facts are not in dispute, the court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the court. If a special case is stated, Order XXXIII shall, as far as applicable, apply thereto. (E. 858.)

(750.)

Questions of
law, and special
cases.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain or relinquish his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the court or a judge may make an order declaring him, and all persons claiming under him, forever barred against the applicant and persons claiming under him; but the order shall not affect the rights of the claimants as between themselves. (E. 859.)

(751.)

Claimant not
appearing, to be
barred.

11. Except when otherwise provided by statute, the judgment in any action, or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the court or a judge in a summary way, under rule 8 of this Order, shall be final and conclusive against the claimants, and all persons claiming under them, unless by special leave of the court or judge, as the case may be. (E. 860.)

(752.)

Decision, when
final.

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the court or a judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as are just. (E. 861.)

(753.)

Sale may be
ordered.

13. Orders XXX and XXXIV shall, with the necessary modifications, apply to an interpleader issue; and the court or judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for. (E. 862.)

(754.)

Discovery, trial,
and judgment.

**Order LVI.
rr. 14-17.**

(755.)
One order in
several matters.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters, such order may be made by the court or a judge before whom the interpleader proceedings are taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters. (E. 863.)

(756.)
Costs and inci-
dental matters.

15. The court or a judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as are just and reasonable. (E. 864.)

(756a.)
Sheriff's costs.

16. Where a claim is made to or in respect to any goods or chattels taken in execution under the process of the court it shall be in writing, and upon the receipt of the claim the sheriff or his officer shall forthwith give notice thereof to the execution creditor according to form 25 in appendix B, or to the like effect, and the execution creditor shall, within four days after receiving the notice, give notice to the sheriff or his officer that he admits or disputes the claim, according to form 26 in appendix B, or to the like effect. If the execution creditor admits the title of the claimant, and gives notice as directed by this rule, he shall only be liable to such sheriff or officer for any fees and expenses incurred prior to the receipt of the notice admitting the claim. (E. Or. 57, r. 16, E. R. S. C., 1889, r. 9.)

(756b.)
Withdrawal of
sheriff.

16A. When the execution creditor has given notice to the sheriff or his officer that he admits the claim of the claimant, the sheriff may thereupon withdraw from possession of the goods claimed, and may apply for an order protecting him from any action in respect to the said seizure and possession of the said goods, and the judge may make any such order as is just and reasonable in respect to the same: Provided always that the claimant shall receive notice of such intended application, and if he desires it, may attend the hearing of the same, and if he attends, the judge may, in and for the purposes of such application, make all such orders as to costs as are just and reasonable. (E. Or. 57, r. 16A., E. R. S. C., March 1896, r. 3.)

(756c.)
Costs in
interpleader.

17. Where the execution creditor does not in due time, as directed by rule 16, admit or dispute the title of the claimant to the goods or chattels, and the claimant does not withdraw his claim thereto by notice in writing to the sheriff or his officer, the sheriff may apply for an

interpleader summons to be issued, and should the claimant withdraw his claim by notice in writing to the sheriff or his officer, or the execution creditor in like manner serve an admission of the title of the claimant prior to the return day of such summons, and at the same time give notice of such admission to the claimant, the judge may, in and for the purposes of the interpleader proceedings, make all such orders as to costs, fees, charges, and expenses, as are just and reasonable. (E. Or. 57, r. 17, E. R. S. C., 1889, r. 10.)

Order LVI.**ORDER LVII.****Order LVII.
rr. 1-4.**

APPEALS, ETC.

1. All appeals to the court shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may, by the notice of motion, appeal from the whole, or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part. (E. 865.)

(757.)
Appeals to be
by re hearing
and after notice
of motion.

2. The notice of appeal shall be served on all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the court may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal, upon such terms as are just, and may give such judgment, and make such order as might have been given or made if the persons served with such notice had been original parties. Any notice of appeal may be amended at any time as the court thinks fit. (E. 866.)

(758.)
Notice, on
whom to be
served

3. The notice of appeal shall be served within ten days from the day when the appellant or his solicitor first had notice that the order upon the decision appealed from had been made; but the court or a judge may enlarge and extend the time for giving such notice of appeal either before or after the expiration thereof. (S. C. R., Feb. 13th, 1894.)

(759.)
When notice to
be given.

4. Every judgment, order, or decision made by a judge, in court, or in chambers, except orders made in

(760.)
Subjects of
appeal.

Order LVII.
rr. 5-7.

the exercise of such discretion as by law belongs to him, may be set aside or discharged, upon notice, by the court.

(761.)
Powers of court
on appeal, as to
further evi-
dence, infer-
ences, &c.

5. On appeal, the court shall have all the powers and duties as to amendment and otherwise of the court or judge appealed from, together with full discretionary power to receive further evidence on questions of fact, such evidence to be taken by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave, on interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. On appeals from a judgment after trial or hearing of any cause or matter on the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the court. The court shall have power to draw inferences of fact, and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case requires. The powers aforesaid may be exercised by the court, notwithstanding that the notice of appeal states that part only of the decision is complained of, and such powers may also be exercised in favor of all or any of the respondents or parties, although such respondents or parties have not appealed from or complained of the decision. The court shall have power to make such order as to the whole or any part of the costs of the appeal as is just. (E. 868.)

(762.)
New trial may
be ordered.

6. If upon the hearing of an appeal, it appears to the court that a new trial ought to be had, it shall be lawful for the court to order that the verdict and judgment be set aside, and that a new trial be had. (E. 869.)

(763.)
Cross-appeals.

7. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the court or judge below should be varied, he shall within the time specified in the next succeeding rule, or such time as is prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers of the court, but may, in the discretion of the court, be ground for an adjournment of the appeal, or for a special order as to costs. (E. 870.)

8. Subject to any special order which may be made, notice by a respondent under the next preceding rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order, a two days' notice. (E. 871.)

Order LVII.
rr. 8 15.
(764)
Notice of cross-appeal.

9. The party appealing shall file with the prothonotary at Halifax a copy of the notice of appeal when the appeal is entered for argument. (E. 872, part.)

(763.)
Entry of appeal.

10. When an *ex parte* application has been refused by a judge, an application for a similar purpose may be made *ex parte* to the supreme court *en banc*, within four days from such refusal, or if the court is not then sitting within four days from the commencement of the next session of the court thereafter, or within such other time as the court or a judge allows. (E. 874.)

(766.)
Ex parte applications.

11. When any question of fact is involved in an appeal or application for a new trial, the evidence taken in the court below, or by the judge appealed from, bearing on such question, shall, subject to any special order, be brought before the court as follows:—

(767.)
Evidence, how brought up.

(a.) As to any evidence taken by affidavit, by the production of copies of such affidavits;

(b.) As to any evidence given orally, by the production of copies of the judge's notes, or such other material, as the court deems expedient. (E. 875.)

12. No interlocutory order or rule from which there has been no appeal, shall operate so as to bar or prejudice the court from giving such decision on the appeal as is just. (E. 878.)

(768.)
Court not barred by interlocutory order not appealed from.

13. An appeal shall not operate as a stay of execution, or of proceedings under the decision appealed from, except so far as the judge appealed from, or the court, orders; and no intermediate act or proceeding shall be invalidated, except so far as the court directs. Such deposit or other security shall be made or given as is directed by the court or a judge. (E. 880.)

(769.)
Appeal not a stay of proceedings.

14. Interest for such time as execution has been delayed by the appeal, shall be allowed at the rate of six per cent., unless the court or a judge otherwise orders, and such interest shall be added to the judgment without any order for that purpose. (E. 883.)

(770.)
Interest to be allowed where execution stayed

15. Where any application is required to be made to, or any jurisdiction exercised, or any act done by, the judge by whom a cause or matter has been tried or heard,

(771.)
Substitution of judge.

Order LVII. if such judge dies or ceases to be a judge of the court, or if for any other reason it is impossible or inconvenient that such judge should act in the matter, the chief justice may, either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other judge to whom such application may be made, and by whom such jurisdiction may be exercised. (E. 885.)

(772.)
Appeal from
referee, &c.

16. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the court may set aside the award on any ground on which the court might set aside the verdict of a jury. Such appeal shall be to the court, who shall have power to set aside the award or certificate, or to remit all or any part of the matters in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that is just. (E. 886.)

(773.)
Limitation of
certain rules.

17. Rules 1, 2, 3, 4, 5, 6, 9, 10, 11, and 13 of this Order shall only apply to appeals in causes or matters originating in the supreme court or in the county courts. (R. S., c. 104, O. LVII, r. 17; 1889, c. 9, s. 71.)

Order LVIII.
rr. 1—2.

ORDER LVIII.

SESSIONS, VACATIONS, ARGUMENTS, &c.

(774.)
The court
always open.

1. The Supreme Court *en banc* shall sit at Halifax at such times as the business requires and as the attendance of a quorum of the judges can be obtained. (1882, c. 2, s. 13.)

(775.)
Vacation.

2. (1.) In Halifax there shall be a vacation extending from the sixteenth day of July to the fourteenth day of September, both inclusive, in each year. During vacation no contested business shall be transacted except such as relates to the liberty of the subject, and neither party to a cause in which an appearance has been entered shall be compelled to deliver any pleading. If the time for delivering a defence in a cause in which the defendant has appeared has not expired previously to the sixteenth day of July, it shall, without any order to that effect, stand extended until the expiration of five days after the last day of vacation, and if any writ, defence, or other pleading is delivered during vacation the same time shall be

allowed to the opposite party as if it was delivered on the last day of vacation. **Order LVIII.**
rr. 3—7.

(2.) Nothing in this rule shall prevent—

- (a) The issue of process, or the transaction of any business which may be done *ex parte*, or
- (b) The entering of judgment by default in any cause in which no appearance is entered, or
- (c) The hearing during vacation of causes remaining undisposed of at a previous session, or
- (d) Proceedings in respect to contempt by a disobedience to any order or judgment of the court or a judge, or proceedings for enforcing any such order or judgment. (R. S., c. 104, Or. 58, rr. 21, part, 22, 23.)

3. Notwithstanding the next preceding rule, the court or a judge may, during the vacation, by order, upon special cause shown, authorize any proceedings to be had or taken, notwithstanding the vacation. (R. S., c. 104, Or. 58, r. 21, part.) (776.)
Special order.

4. The regular sessions of the Supreme Court *en banc* in each year shall be held as follows:— (778.)
Time for regular sessions.

- (a.) From the second Tuesday in November until the twenty-third day of December, both inclusive, to be called the November session. First session.
- (b.) From the second Tuesday in January until the last day of February, both inclusive, to be called the January session. Second session.
- (c.) From the second Tuesday in March until the Saturday before the third Tuesday in April, both inclusive, to be called the March session. (S. C. R., 30th Oct., 1893, r. 1, part.) Third session.

5. During any of the sessions, the court may from time to time adjourn for short periods, if deemed advisable. (S. C. R., 30th Oct., 1893, r. 1, part.) (779.)
Adjournments of session.

6. If at the end of the March session any causes for argument which have not been called remain on the docket, a special session for the hearing of such causes shall be held in the following July, to commence on a day to be fixed by the court, but no causes except such remanets shall then be heard, except by special leave of the court. (S. C. R., 30th Oct., 1893, r. 2.) (780.)
Special session.

7. Four judges shall constitute a quorum to decide all matters requiring to be heard by the court *en banc*, but (781.)
Quorum of judges.

Order LVIII.
rr. 8-15.

if the attendance of four judges at any time cannot be obtained owing to absence, illness, or other cause sufficient in the estimation of the judges present, three shall constitute such quorum. (R. S., c. 104, Or. 58, r. 4.)

(782.)
Judges delegating authority to pronounce judgment.

8. Any judge may deliver the judgment of the court when authorized to do so by the judges who heard the matter on which judgment is to be pronounced, or may deliver the judgment of any other judge when authorized so to do by such other judge, notwithstanding the absence of the judges or judge aforesaid. (1882, c. 2, s. 11.)

(783.)
Judge appealed from not to sit on appeal.

9. No judge shall sit on the hearing of any appeal from his decision or judgment in court or at chambers, or on any motion for a new trial in a cause or matter tried before him with a jury, unless he is requested by a majority of the judges. (S. C. R., 11th April, 1890.)

(784.)
Entry day for appeals.

10. (1.) The entry days of causes for argument shall be the Tuesdays immediately preceding the commencement of the respective sessions, and no cause shall be entered between either of these days and the end of the session, except by the leave of the court.

Entry on first entry day.

(2.) All causes for argument shall be entered on the first entry day after notice of appeal or notice of motion has been given, but by written consent of the opposite party, his solicitor or agent, or by leave of the court or a judge, they can be entered for argument at any subsequent session instead. (S. C. R., 30th Oct., 1893, r. 3, part.)

(785.)
Party to enter.

11. Except by leave of the court or a judge, the appellant or moving party only shall have the right to enter the appeal or motion, and every appeal or motion shall be inscribed on the docket in one place only. (S. C. R., 23rd Dec., 1892, r. 1 part.)

(786.)
Entry of cross appeals or other motions in the action.

12. Every entry of a cross appeal, or of a second motion or appeal, in a cause or matter in which there is a motion or appeal still unheard, shall state that it is a cross appeal or second motion or appeal, as the case may be. (S. C. R., 23rd Dec., 1892, r. 2 part.)

(787.)
Entry to mention name of judge.

13. In every entry of an appeal or motion the name of the judge who tried or heard the cause or matter shall be stated. (S. C. R., Dec. 23rd, 1892, r. 2 part.)

(788.)
Docket of arguments how prepared.

14. The prothonotary shall for each session place the causes entered for argument upon a docket, keeping the entries from each county in a separate group. (S. C. R., 30th Oct., 1893, r. 3 part.)

(789.)
Inscribing appeals by circuits and counties.

15. The counties shall be arranged on the docket in the following order: Commencing with Hants county

for the November session, with Inverness county for the January session, and with Lunenburg county for the March session, the several counties in each case shall be taken in rotation in the following order: Hants, Colchester, Cumberland, Halifax, Inverness, Victoria, Cape Breton, Richmond, Pictou, Antigonish, Guysboro, Lunenburg, Queens, Shelburne, Yarmouth, Digby, Annapolis, Kings. (S. C. R., 30th Oct., 1893, r. 3, part.)

16. In respect to the entries from each county, causes or matters originating in the Supreme Court shall be placed first, arranged in separate groups, according to the judge before whom the cause was tried or the matter heard, and such groups shall be placed on the docket in the order of precedence of the judges. (S. C. R., 6th Dec., 1892.)

(790.)
Courts and
judges, inscrib-
ing according to.

17. Subject to the foregoing provisions of this rule, causes shall be placed on the docket so that each member of the bar in rotation, according to precedence, shall have one cause from his entries inscribed in his name, until all of the entries are placed on the docket.

(791.)
Precedence of
counsel, inscrib-
ing according to.

18. It shall not be necessary to re-enter causes not called for argument, but they shall be inscribed on the docket of causes for the next session at the head of the lists of causes for their respective counties. (S. C. R., 30th Oct., 1893, r. 3 part.)

(792.)
Re-entry not
necessary if
cause not called.

19. The docket for the July session shall commence with the cause immediately following the cause last called at the previous March session. (S. C. R., Oct. 30th, 1893, r. 3, part.)

(793.)
Docket for
special session.

20. (1.) The court shall in calling the docket allow an interval of at least one day to elapse after the completion of the argument of the last cause,

(794.)
Adjournments
between groups
of entries from
circuits.

(a.) on the list for the County of Halifax, and,

(b.) on the list for the counties in each circuit,

before calling the next cause, unless such cause is on the list for the counties in the Cape Breton circuit, in which case the court shall allow an interval of at least two days to elapse.

(2.) Nothing in this Order shall prevent the argument of any cause on any of such intervening days by consent of parties.

Arguments dur-
ing such ad-
journments.

(3.) Notwithstanding anything in this order, the court may, under special circumstances, hear the argument of any cause out of its regular order, or give such cause priority. (1891, c. 12, ss. 3, 5.)

Argument out
of turn under
special circum-
stances.

Order LVIII.**rr. 21—23.**

(795.)
Consequence of
not entering
cause.

21. A judgment, order, decision, or verdict appealed from, or sought to be set aside, shall stand as if no notice of appeal, or notice of motion to set the same aside, had been made or given, if the cause or matter in which the same was made or given is not entered for argument on the first entry day after such notice, or if the appeal or motion of which such notice has been given is not heard when the cause or matter is called, through default in the moving party, unless such default is waived by the other parties interested, or unless the court orders. (R. S., c. 104, Or. 58, r. 6.)

(796.)
Order to be
taken out at the
session judgment is given.

22. If the order of the Supreme Court *en banc* is not taken out during the same session in which the decision is given, the successful party will not be entitled to any costs, unless it appears from the opinions that such costs have been allowed. (S. C. R., 13th Feb., 1894.)

(797.)
Printing of ap-
peal cases, form
of case, type,
index.

23. (1.) All evidence and documents to be used at the argument shall be printed in demi-quarto form, on paper of good quality, and on the left hand pages of the book only, and all the right hand pages shall be left blank. The type shall be small pica, leaded, and the size of each page shall be eleven inches by eight and one-half inches, and every tenth line shall be numbered in the margin throughout. There shall be an index in the beginning of the book, arranged in the same order in which the contents of the book are printed, and the correspondence and other exhibits shall be printed in the order of their respective dates. The index shall refer to:

- (a.) Each pleading, rule or order, and give its date;
- (b.) The evidence of each witness, and give the name of each;
- (c.) Each exhibit, or other document, and give its description, date and mark of identification.

Party to print.

(2.) In appeals the case shall be printed by the appellant; in cases stated, by the plaintiff; and in all other matter and causes, by the party who has given the notice of motion or has the carriage of the proceedings. Affidavits to be used upon motions made to the Supreme Court *en banc* shall be printed by the party who desires to use them.

Notice to inspect
proposed case.

(3.) The party whose duty it is to have the case printed shall prepare the matter which in his opinion should form the case, and shall give to the opposite party, his solicitor, or agent, twenty-four hours' notice that the same may be inspected at a time and place named in the notice. If no agreement is come to as to what should

be printed, the case shall be settled by a judge after twenty-four hours' notice of the application. Abstracts may be used by consent or by order of a judge, but the court may refer, or allow either party to refer, to the full text of the matters or documents of which such abstracts have been made, or may order any further printing to be done.

Order LVIII.
r. 24.
Settlement of
case by judge.

(4.) The party whose duty it is to have the case printed shall be furnished by the opposite party with copies of all exhibits and other documents in the possession or under the control of the latter, which are to be printed; and in default of the same being so furnished within forty-eight hours after demand made, the party in default shall, at his own expense, cause such exhibits or documents to be printed for the argument.

Opposite party
to furnish his
matter for case.

* * * * *

(6.) Eight printed copies of the case shall be deposited with the prothonotary for the use of the judges, officers of the court, and reporter, and three copies shall be delivered to the opposite party, his solicitor or agent, as soon as the case is printed.

Eight printed
copies of case.

(7.) The court or a judge may dispense with the printing of any matter on reasonable cause being shown by affidavit, and the court may postpone any argument from time to time, on cause shown, to enable the printing to be completed or otherwise.

Dispensing with
printing.

(8.) In this rule the expression "case" includes the appeal papers, orders, minutes of evidence, case stated, affidavits, report of trial, exhibits, and all other matters on which any argument is to be proceeded with. (R. S., c. 104, Or. 58, r. 7; S. C. R., 9th Nov., 1893.)

"Case" inter-
preted.

24. (1.) Before any argument is heard, the appellant or moving party shall deposit with the librarian, in the law library, a printed copy of the case, together with a fee of twenty-five cents, which fee shall be included in the costs, and be paid by stamp.

(798.)
Copy of appeal
case for law
library and fee.

(2.) No case or record on appeal shall be certified to the Supreme Court of Canada, or to the Judicial Committee of Her Majesty's Privy Council, unless the proof sheets of the judgments are submitted to the judges for correction, nor until two copies of the record or case, in the form in which it is required to be certified, are deposited with the prothonotary, together with a fee of twenty-five cents; one of such copies shall be filed in the prothonotary's office, and the other, with the fee, deposited with the librarian in the law library. In cases of appeal to

Copies of ap-
peals to Sup-
reme Court and
Privy Council.

Order LVIII. the Privy Council, the depositing of the copy for the library may be dispensed with if the solicitor for the appellant gives the librarian an undertaking in writing to deliver to him a printed copy before the appeal is heard.

Fees to be used
to pay for in-
dexing.

(3.) The fees deposited with the librarian shall be used to form a fund to pay for indexing and binding in a suitable manner and uniform volumes the printed cases for argument and on appeal deposited in the law library.

Payable by law
stamp.

(4.) The fees in this rule provided for shall be paid by affixing a law library stamp, such as is affixed to writs of summons, on the copy of the case handed to the Chief Justice or presiding judge at the argument; and in cases of appeal from the court, by affixing the same to the copy of the record or case filed with the prothonotary. (S. C. R., Dec. 23rd, 1892, rr. 3, 4, 5, 6.)

Order LIX.
rr. 1-5.

ORDER LIX.

OFFICERS AND THEIR DOCUMENTS.

(799.)
Seals.

1. The existing official seals in use by the respective prothonotaries shall continue to be the seals used, but may be changed as the Governor-in-Council from time to time directs. (E. 899.)

(800.)
Authenticating
documents.

2. All copies, certificates, and other documents appearing to be sealed with a seal of the court, used by the prothonotary, shall be presumed to be authenticated copies or certificates or other documents issued by the prothonotary, and may be received in evidence, and no signature or other formality, except the sealing with the prothonotary's seal, shall be required for the authentication of any such copy, certificate, or other document. (E. 900.)

(801.)
Enrolment not
necessary.

3. It shall not be necessary to enrol any judgment or order, whether dated before or since the first day of October, A. D. 1884. (E. 901.)

(802.)
Indexes, &c.

4. Proper indexes or calendars to the files or bundles of all documents filed, shall be kept, so that the same may be conveniently referred to when required, and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the proper fee. (E. 910.)

(803.)
Books to be kept
at protho-
notary's office and
entries therein.

5. There shall also be entered in proper books kept for that purpose, the time of delivery of every document filed in the prothonotary's office, and such books shall at

all times during office hours be accessible to the public on payment of the proper fee. (E. 911.) **Order LIX.
rr. 6—13.**

6. Every judgment, order, certificate, petition, affidavit or document, made, presented, filed, or used in any cause or matter, shall be distinguished by having plainly written or stamped thereon the year, the letter and the number by which the cause or matter is distinguished in the books kept in the prothonotary's office. (E. 912; E. R. S. C., Feb. 1895, r. 7.) (801.)
Documents
numbered and
dated.

7. There shall also be entered in the cause book the date of every judgment, order, and certificate made in every cause or matter. (E. 913.) (805.)
Entry of dates
in cause book.

8. For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the prothonotary shall, at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the proper fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in the cause or matter. (E. 917.) (806.)
Certificate of
proceedings to
be given.

9. No affidavit or document filed at the prothonotary's office shall be taken therefrom without the order of a judge. (E. 921.) (807.)
Filed papers not
to be taken
away.

10. The forms contained in the appendices shall be used in or for the purposes of the prothonotary's office, with such variations as circumstances require. (E. 925.) (808.)
Forms.

11. Upon every pleading or other proceeding which is filed in the prothonotary's office, the date of filing the same shall be printed or written. (E. 909.) (809.)
Filing marked
by prothonotary

12. On the first day of each sittings the prothonotary shall deliver in open court a correct statement of the fines imposed at the preceding sittings, together with a statement of all such as have been collected since the preceding sittings. (S. C. A., s. 11.) (810.)
Statement of
fines.

13. Any obligation or security which heretofore has been, or hereafter may be, ordered by the court or a judge to be made to the prothonotary as the obligee thereof, may be enforced by action, either in the name of such prothonotary or by order of the court or a judge in the name of any succeeding prothonotary, or of any other such officer, and such order may prohibit the commencement or continuance of any action on any such obligation or security by or in the name of the original obligee or his representatives. (S. C. A., s. 17.) (811.)
Securities taken
in name of pro-
thonotary may
be sued by his
successor.

* * * * *

Order LIX.**rr. 16-17.**

(814.)
Prothonotary to
furnish bill of
items, when re-
quired.

16. The prothonotary of every county shall, whenever required, furnish to the solicitors or parties requiring the same, a bill of the items of his own fees and those of the crier, and in default of so doing before taxation of costs in the cause, he shall be liable to a penalty of twenty dollars, and shall forfeit his fees. (S. C. A., s. 20.)

(815.)
Commissioners
allowing *cer-
tiorari*.

17. The commissioners for taking affidavits to hold to bail and recognizances of bail, appointed and hereafter to be appointed by the Governor-in-Council, shall continue to have authority to allow writs of *certiorari* and to order such writs to issue, and to indorse the same, when no judge is in the county where the proceedings for such *certiorari* are taken. They shall also have authority to administer oaths, and to take affidavits in causes and matters relating to the court and its proceedings, and also to take the examination of witnesses aged, infirm, or about to leave the province. (1874, c. 1, s. 1; 1882, c. 2, s. 10.)

Order LX.**rr. 1-4.****ORDER LX.**

TIME.

(816.)
"Month" means
calendar month.

1. Where by these rules, or by any judgment or order given or made after the first day of October, A. D. 1884, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these rules, such time shall be computed by calendar months, unless otherwise expressed. (E. 961.)

(817.)
Sunday, &c., not
counted in cer-
tain cases.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time. (E. 962.)

(818.)
Expiration of
time on Sunday.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the prothonotary's office is closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the office is next open. (E. 963.)

(819.)
Computing time
for security for
costs.

4. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be

reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter. (E. 966.)

Order LX.
FF. 5-9.

5. The court or a judge shall have power to enlarge or abridge the time appointed by these rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case requires, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. (E. 967.)

(820.)
Power to enlarge or abridge time.

6. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the court or a judge. (E. 968.)

(821.)
Enlargement by consent.

7. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday. (E. 971.)

(822.)
Hours for service.

8. In any case in which any particular number of days, not expressed to be clear days, is prescribed, the same shall be reckoned exclusively of the first day and inclusively of the last day. (E. 972.)

(823.)
Computing time by days.

9. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this rule. (E. 973.)

(824.)
Proceedings after lapse of a year.

* * * * *

ORDER LXIII.

Order LXIII.
R. 1.

COSTS.

1. Subject to the provisions of the Act and these rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the court or

(827.)
Costs discretionary.

Order LXIII. judge: Provided that nothing herein contained shall
rr. 2-5. deprive an executor, administrator, trustee, or mortgagee
 Trustees, mort- who has not unreasonably instituted or carried on or re-
 gagees, &c. sisted any proceedings, of any right to costs out of a
 particular estate or fund to which he would be entitled
 according to the rules formerly acted upon in equity:

Jury cases.

Provided also that, where any action, cause, matter, or
 issue is tried with a jury, the costs shall follow the event,
 unless the judge by whom such action, cause, matter or
 issue is tried, or the court, otherwise orders. (E. 976.)

(828.)
 Costs on several
 issues.

2. When issues in fact and law are raised upon a
 claim or counter-claim, the costs of the several issues
 respectively, both in law and fact, shall, unless otherwise
 ordered, follow the event. (E. 977.)

(829.)
 Costs in causes
 removed from
 inferior court.

3. If a cause is removed from an inferior court hav-
 ing jurisdiction in the cause, the costs in the court below
 shall be costs in the cause, unless the court or a judge
 otherwise orders. (E. 978.)

(830.)
 Solicitor caus-
 ing delay liable
 for costs.

4. Where upon the trial of any cause or matter it
 appears that the same cannot conveniently proceed by
 reason of the solicitor for any party having neglected to
 attend personally, or by some proper person on his behalf,
 or having omitted to deliver any paper necessary for the
 use of the court or judge, and which according to the
 practice ought to have been delivered, such solicitor shall
 personally pay to all or any of the parties such costs as
 the court or judge thinks fit to award. (E. 980.)

(831.)
 Security for
 costs.

5. (1.) Security for costs may be ordered where by
 law or by the practice a party has heretofore been en-
 titled to obtain security for costs and, without restricting
 the generality of this provision, also in the following
 cases:—

- (a.) Where the plaintiff resides out of Nova Scotia;
- (b.) Where the plaintiff is ordinarily resident out of
 Nova Scotia, though he may be temporarily
 resident within Nova Scotia;
- (c.) Where the plaintiff has brought another action
 or proceeding for the same cause which is
 pending in Nova Scotia or in any other
 country;
- (d.) Where the plaintiff or any person through or
 under whom he claims has had judgment or
 order passed against him, in another action
 or proceeding for the same cause in Nova
 Scotia, or in any other country, with costs,
 and such costs have not been paid;

and the court or a judge may make such order for security for costs, and staying proceedings until security is given, as seems just. Order LXIII.
rr. 6--9.

(2.) Where it appears by the writ of summons, notice, or other proceeding by which a cause or matter is commenced, or by an indorsement thereon, that the plaintiff resides out of Nova Scotia, the order may be obtained *ex parte*, after appearance by the defendant applying therefor pursuant to any such writ of summons. (O. (1897) rr. 1198, 1199, part.)

6. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the court or judge directs. (E. 981.) (832.)
Amount of security for costs.

7. Where a bond is given as security for costs, it shall, unless the court or a judge otherwise directs, be given to the party or person requiring the security, and not to an officer of the court. (E. 982.) (833.)
Bond to the party for security.

8. Where an originating summons, a petition or a notice of motion is served, and notice is given to the party served that in case of his appearance in court his costs will be objected to, accompanied by a tender of \$5.00 for costs, the person making such payment shall be allowed the same in his costs, if the service was proper, but not otherwise; but this rule is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the court or judge considers the party entitled, notwithstanding such notice or tender, to appear in court. (O. (1897), r. 1153.) (834.)
Tender of costs, on service of petition.

9. If in any case it appears to the court or a judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the court or judge may call on the solicitor of the person by whom such costs have been so incurred to shew cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case require) why the solicitor should not repay to his client any costs which the client has been ordered to pay to any other person, and thereupon may make such order as the justice of the case requires. The court or judge may refer the matter to the taxing master for inquiry and report, and direct (835.)
Costs improperly incurred, &c.

**Order LXIII.
rr. 10—11c.**

the solicitor in the first place to shew cause before the taxing master, and may also appoint a solicitor to attend and take part in such inquiry. Such notice (if any) of the proceedings or order shall be given to the client, in such manner as the court or judge directs. Any costs of the solicitor so appointed and attending shall be paid by such parties or out of such funds as the court or a judge directs. (E. 986.)

(836.)
Costs of solicitor
who is guardian
ad litem.

10. Where the court or a judge appoints one of the solicitors of the court to be guardian *ad litem* of an infant or person of unsound mind, the court or judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in court in which such infant or person of unsound mind is interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case require. (E. 988.)

(837.)
Lien for costs
not to affect
set-off.

11. A set-off for damages or costs between parties may be allowed, notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought, if the court or judge thinks fit. (E. 989.)

(837a.)
Costs out of
estate.

11A. The costs occasioned by any unsuccessful claim, or unsuccessful resistance to any claim, to any property, shall not be paid out of the estate, unless the judge otherwise directs. (E. 989A; E. R. S. C., Nov., 1893, r. 28.)

(837b.)
Costs as regards
particular
shares.

11B. The costs of inquiries to ascertain the person entitled to any legacy, money or share, or otherwise incurred in relation thereto, shall be paid out of such legacy, money or share, unless the judge otherwise directs. (E. 989B, E. R. S. C., Nov. 1893, r. 29.)

(837c.)
Distribution not
to be delayed
by difficulties
as to some
shares.

11c. Where some of the persons entitled to a distributive share of a fund are ascertained, and difficulty or delay occurs, or is likely to occur, in ascertaining the persons entitled to the other shares, the court or a judge may order or allow immediate payment of their shares to the persons ascertained without reserving any part of those shares to answer the subsequent costs of ascertaining the persons entitled to the other shares; and in all such cases such order may be made for ascertaining and payment of the costs incurred down to and including such payment as the court or judge thinks reasonable. (E. 989c; E. R. S. C., Nov., 1893, r. 30.)

12. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed. (E. 990.)

Order LXIII.
rr. 12-20.
(838.)
Costs on award.

13. One day's notice of taxing costs, together with a copy of the bill of costs, shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor in all cases where a notice to tax is necessary. (E. 991.)

(839.)
One day's notice of taxation.

14. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian. (E. 992.)

(840.)
No notice necessary where no appearance.

15. Where the prothonotary may enter judgment for default of appearance or defence, or by confession, he may, except in actions for foreclosure of mortgage, tax the costs, but such taxation may be reviewed or set aside within twelve months by the court or a judge. (P. A. 243 part.)

(841.)
Costs taxed by prothonotary in defaults.

16. Every prothonotary in whose office an action or appeal is pending, on the request of any party shall examine and check any bill of costs for taxation, and ascertain that it contains no other or greater fees than are allowed by law; no allowance per folio shall be made but upon his certificate of the number of folios; and except as in the last preceding rule otherwise provided, before any such bill is charged against the plaintiff or defendant, it shall be allowed and signed by a judge or other taxing authority. (R. S., c. 128, s. 4.)

(842.)
Bill of costs to be examined and certified by prothonotary.

17. The prothonotary shall in every case give the items of his charges to the taxing authority when required. (R. S., c. 128, s. 5.)

(843.)
Prothonotary to give items of his charges.

18. When interlocutory costs are taxed against any person, execution may be issued for the recovery thereof. (P. A. 255.)

(844.)
Interlocutory costs, execution for.

19. Costs may be sued for and recovered as any other debt, and either party may have such costs taxed at any time before or at the trial. Any bill duly taxed before trial shall be *prima facie* evidence that the amount allowed is the correct amount. If the taxation is contested by the party against whom such costs are sought to be recovered the same shall be final. (P. A. 256.)

(845.)
Action for costs. Taxation evidence of correctness.

20. Solicitors and counsel shall be entitled to charge and be allowed the fees provided in the chapter "Of Costs and Fees," which shall also apply to pending proceedings.

(846.)
Tariff of solicitors' costs.

**Order LXIII.
rr. 21—23.**

(847.)
Provision as to
taxing of costs.

21. When costs are given to any party, they shall be such as are provided for by the scale of costs now in force in that behalf, and shall be taxed according to such scale by the taxing authority. (1894, c. 13, s. 1.)

(847a.)
Judge shall cer-
tify reasons for
not allowing
costs.

22. When any successful party is deprived of any costs by any order or judgment of the court, or a judge, the reason for so depriving such party of any such costs shall be expressed in and by such order or judgment. (1894, c. 13, s. 2.)

SPECIAL ALLOWANCES AND GENERAL REGULATIONS.

(848.)
Special allow-
ances, &c.

23. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court :

Pleadings, al-
lowances for.

(1.) As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent or client, or for counsel.

Swearing affi-
davits.

(2.) As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of any affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing authority in his discretion thinks fit.

Drawing affi-
davits.

(3.) The allowances for instructions and drawing an affidavit in answer to interrogatories include all attendances on the deponent to settle and read over.

Delivery of
pleadings.

(4.) As to delivery of pleadings, services and notices, the fees are not to be allowed when the same solicitor, or firm of solicitors, is for both parties, unless it is necessary for the purpose of making an affidavit of service.

Perusals.

(5.) As to perusals, the fees are not to be allowed where the same solicitor, or firm of solicitors, is for both parties.

Separate
answers or pro-
ceedings by the
same solicitors.

(6.) Where the same solicitor, or firm of solicitors, is employed for two or more defendants, and separate pleadings are delivered, or other proceedings had, by or for two or more such defendants separately, the taxing authority shall consider, in the taxation of such solicitor's bill of costs, either between party and party, or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

(7.) As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence and the attendance of witnesses are to be allowed.

Order LXIII.
r. 23
Evidence.

(8.) As to agency correspondence in country agency causes and matters, if it is shewn to the satisfaction of the taxing authority that such correspondence has been special and extensive, he may make such special allowance in respect thereto as in his discretion he thinks proper.

Agency correspondence.

(9.) As to attendances at the judges' chambers, where by reason of the non-attendance of any party (unless it is considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account or other proceeding, the attendance is adjourned without any useful progress being made, the judge may order such an amount of costs, if any, as he thinks reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Non-attendance or neglect of parties on proceedings in chambers.

(10.) In a folio every figure comprised in a column, or authorized to be used, shall be counted as one word.

Figure in column taxed as a word.

(11.) As to inspection of documents under Order XXX, rule 15, no allowance is to be made for any notice or inspection unless it is shown to the satisfaction of the taxing authority that there were good and sufficient reasons for giving such notice and making such inspection.

Inspection of documents under Order 30, R. 15.

(12.) As to taking copies of documents in possession of another party, or extracts therefrom, under rules of court or any special order, the party entitled to take the copy or extracts is to pay the solicitor of the party producing the document for such copy or extract as he, by writing, requires, at the rate of ten cents per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereto.

Copies of documents ten cents per folio unless production refused.

(13.) The court or judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter, in court or at chambers, and whether the same is objected to or not, direct the costs of any in-

Disallowance of costs of improper, vexatious, or unnecessary matter in documents or proceedings.

Order LXIII.—**r. 23.**—dorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, application for time, bills of costs, service of notice of motion or summons or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing authority to look into the same and to disallow the costs thereof, or of such part thereof as he finds to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question has not been raised before, and dealt with by the court or judge, it shall be the duty of the taxing authority to look into the same (and as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so.

Set-off of costs. (14.) In any case in which, under the next preceding regulation, or any other rule of court, or by the order or direction of a court or judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing authority may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he thinks fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such authority may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Unnecessary appearance at court or in chambers. (15.) Where any party appears upon any application or proceeding in court or chambers, in which he is not interested, or upon which according to the practice of the court he ought not to attend, he is not to be allowed any costs of such appearance unless the court or a judge expressly directs such costs to be allowed.

Costs of applications to extend time. (16.) The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing authority, unless the court or judge has specially directed how the costs are to be paid or borne.

The taxing authority shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of an application to extend time shall not be allowed in cases to which rule 6 of Order LX applies, unless the party making such application has previously applied to the opposite party to consent and he has not given a consent to a sufficient extension of time, or the taxing authority considers there was a good reason for not applying to the other party; and in case the taxing authority does not allow the costs of such application to the court or a judge, and considers that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs in the manner provided by regulation 14.

(17.) As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing authority to have been necessary or proper for the attainment of justice, or defending the rights of the party, or which appear to the taxing authority to have been incurred through over-caution, negligence, mistake or merely at the desire of the party.

Between party and party no costs for over-caution, negligence, mistake.

(18.) As to any work and labour properly performed and not herein provided for, and in respect to which fees have been allowed immediately preceding the coming into force of these rules, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

Fees not herein provided for.

(19.) When the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which appears to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which has been paid by the plaintiff, according to the course of the court at the time of any amendment.

Costs of amendment of plaintiff's pleadings.

(20.) Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

Plaintiff refused costs of amendment, defendant's costs occasioned by amendment.

**Order LXIII.
r. 23.**

Fees of counsel,
experts, &c.

(21.) The allowances in respect to fees to conveying counsel, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the court or judge, whose decision shall be final.

Costs payable
by one defend-
ant to another
may be ordered.

(22.) Where the costs of one defendant ought to be paid by another defendant, the court may order payment to be made by the one defendant to the other directly.

Review of taxa-
tion on applica-
tion of party
opposing.

(23.) Any party who is dissatisfied with the decision of the taxing authority as to any item or part of an item in a bill of costs, to which he has objected on taxation, may have such item or part of item re-taxed by a judge after forty-eight hours' notice in writing to the opposite party, specifying the items objected to, and the judge may thereupon make such order as to him seems just; but the decision of the taxing authority shall be final and conclusive as to all matters which have not been objected to on the taxation before him; such re-taxation shall not operate as a stay of proceedings. If the costs are reduced on re-taxation, the prothonotary shall minute such reduction on the margin of the docket of judgment, and the amount shall be deducted in the order for levy on the execution, or if previously paid may be recovered by action. In case the bill on re-taxation is reduced one-sixth, or more, the costs of the re-taxation shall be borne by the party whose bill has been reduced, otherwise they shall be borne by the party applying for the re-taxation.

Costs of re-taxa-
tion if reduced
one-sixth.

Costs on applica-
tion of party
presenting bill
for taxation.

(24.) In case the party offering the bill for taxation is desirous of having it re-taxed he shall be entitled to do so before entering judgment or issuing execution thereon, on giving forty-eight hours' notice in writing to the opposite party, specifying the items or parts of items he claims to have added to the bill. If the bill on re-taxation is increased one-sixth the party applying for the re-taxation shall be entitled to such costs of re-taxation as the judge allows, which shall be added to the bill; if he fails to increase the bill to the extent of one-sixth he shall pay to the opposite party the costs of re-taxation, which shall be fixed by the judge and deducted from the bill when re-taxed.

Costs on success
or failure to in-
crease one-sixth,
how borne.

(25.) In causes in the Supreme Court a judge of that court shall be the re-taxing judge, and in causes in a county court the judge of that county court. (E. 1002 part; O. (1897), r. 1140.)

ORDER LXIV.

Order LXIV.

RR. 1--2.

NOTICES, ETC.

1. All notices required by these rules shall be in writing, unless expressly authorized by the court or a judge to be given orally. (E. 1003.) (819.) Notice to be in writing.

2. Every notice given in the progress of or preliminary to a cause, shall be received in evidence on affidavit of the service thereof made by a solicitor or a solicitor's clerk, specifying the time and mode of such service. (P. A. 187.) (850.) Notices, how to be received in evidence.

ORDER LXV.

Order LXV.

RR. 1--4.

SERVICE OF ORDERS, ETC.

1. Except in the case of an order for attachment of the person, it shall not be necessary to the regular service of an order that the original order be shown, if an authenticated copy of it is exhibited. (E. 1012.) (851.) Original order need not be shown except for attachment.

2. All writs, notices, pleadings, orders, summonses, and other documents, proceedings, and written communications, in respect to which personal service is not requisite, shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served, as defined by Orders IV and XII, with any person resident at or belonging to such place. (E. 1013.) (852.) Service of documents where personal service not necessary.

3. Notices sent from any office of the court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall, *prima facie*, be considered as the time of service thereof, and the posting thereof shall, *prima facie*, be a sufficient service. (E. 1014.) (853.) Service by post.

4. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address, as required by Orders IV and XII, or there is no person resident at or belonging to the place of such address with whom to leave them, all writs, notices, pleadings, orders, summonses, and other documents, proceedings, and written communications in respect to which personal service is not requisite, may be served by causing them to be posted up in a conspicuous place in the office of the prothonotary. (E. 1015.) (854.) Where no appearance or no address.

Order LXV.
rr. 5-8.(855.)
Constructive
service.

5. Where personal service of any writ, notice, pleading, summons, order, or other document, proceeding, or written communication, is required by these rules or otherwise, and it is made to appear to the court or a judge that prompt personal service cannot be effected, the court or judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as is just. (E. 1017.)

(856.)
Party suing, &c.,
in person, after-
wards employ-
ing solicitor.

6. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders and other documents, proceedings, and written communications, which ought to be delivered or served on the party on whose behalf the notice is given, shall thereafter be delivered to or served upon such solicitor. (E. 1018.)

(857.)
Service on solicitor
appearing
for person not a
party

7. Where a person who is not a party appears in any proceeding, either before the court or in chambers, service on the solicitor by whom such person appears, whether such solicitor acts as principal or agent, shall be deemed good service except in matters requiring personal service. (E. 1019.)

(858.)
Affidavits of ser-
vice, what to
contain.

8. Affidavits of service shall state when, where and how, and by whom, such service was effected. (R. S., c. 104, Or. 65, r. 8.)

Order LXVI.
rr. 1-2.**ORDER LXVI.****NON-APPLICATION OF RULES TO CRIMINAL AND DIVORCE PROCEEDINGS, ETC.***(859.)
Criminal and
divorce proceed-
ings excepted
from rules.

1. Nothing in these rules shall affect the procedure or practice in criminal proceedings, or proceedings for divorce or other matrimonial causes. (E. 1026.)

(860.)
Pleadings in
prohibition

2. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages. (E. 1028.)

* * * * *

ORDER LXVIII.

EFFECT OF NON-COMPLIANCE.

Order
LXVIII.
rr. 1-4.

1. Non-compliance with any of these rules, or with any rule of practice for the time being in force, shall not render any proceedings void, unless the court or a judge so directs, but such proceedings may be set aside, either wholly or in part, as irregular, or amended, or otherwise dealt with, in such manner and upon such terms as the court or a judge thinks fit. (E. 1037.)

(863.)
Non-compliance
not fatal.

2. No application to set aside any proceedings for irregularity shall be allowed, unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity. (E. 1038.)

(864.)
Prompt applica-
tion founded on
irregularity.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion. (E. 1039.)

(865.)
Objections to be
set out in sum-
mons or notice.

4. Where an application is made to set aside any process or proceeding for irregularity, with costs, and the application is dismissed generally, without any special direction as to costs, it is to be understood as dismissed with costs. (E. 1040.)

(866.)
Costs on dis-
missal of ap-
plication.

ORDER LXIX.

INTERPRETATION OF TERMS.

Order LXIX.
r. 1.

1. The provisions of the Interpretation section of "The Judicature Act" shall apply to these rules.

(867.)
Meaning of
terms.

In these rules, unless the context otherwise requires, the several words hereinafter mentioned or referred to shall have or include the meaning following:—

- "Originating summons" means every summons other than a summons in a pending cause or matter;
- "Person" includes a body corporate or politic;
- "Receiver" includes consignee or manager appointed by or under an order of the court;
- "Taxing Authority" means the person whose duty it is to tax the costs to be taxed, and includes a Judge of the Supreme Court, the Taxing Master and a Master of the Supreme Court who is a Judge of a County Court, in actions, appeals, and proceedings in the Supreme Court;
- "The Act" means "The Judicature Act";
- "Master" means a Master of the Supreme Court;

Order LXX.
r. 2.

- “Prothonotary” includes deputy prothonotary;
 “Sheriff” includes deputy sheriff, coroner and other person discharging the duties of sheriff in the particular case, or for the time being;
 “Solicitor” includes attorney;
 “Plaintiff” “defendant,” and “party,” include bodies corporate or politic, or holding the relation of plaintiff, defendant, or party.
 “Heretofore” means prior to the coming into force of these rules.
 “Summons” includes notice of motion at chambers.
 (E. 1041, E. R. S. C., Aug. 1894, r. 11.)

(868.)
Singular and plural.

2. In these rules, unless the context otherwise requires, the singular number includes the plural, and the plural number includes the singular. (E. 1042.)

Order LXX.
rr. 1—3.

ORDER LXX.

GENERAL RULES.

(869.)
No revival by repeal.

1. No rule, order, or enactment, repealed by any subsequent rule, order, or enactment; shall be revived by any of these rules, unless expressly so declared. (E. 1043.)

(870.)
Former practice, when preserved.

2. Where no other provision is made by the Act or these rules the existing procedure and practice remain in force. (E. 1044.)

(871.)
Vacancy in office of Chief Justice.

3. During the period of any vacancy in the office of Chief Justice, or, in his absence, these rules shall operate as if the words “or senior judge of the Supreme Court” were inserted after the words “Chief Justice” whenever used. (E. 1045.)

APPENDICES.

Appx. A.
Part I.
No. 1.

FORMS.

APPENDIX A.

PART I.

FORMS OF WRITS OF SUMMONS, &c.

No. 1.

GENERAL FORM OF WRIT OF SUMMONS. (O. 2, r. 3.)

19... (*Here put the letter and number.*)

In the Supreme Court.

Between A. B., Plaintiff,
and
C. D. and E. F., Defendants.

VICTORIA, by the Grace of God, &c.

To C. D., of....., in the County of.....:

We command you, That within ten days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B.; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Issued the.....day of....., A. D. 19..

Memorandum to be subscribed on the Writ.

N. B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant (*or* defendants) may appear hereto by entering an appearance (*or* appearances) either personally or by solicitor at the Prothonotary's Office, at....., in the County of.....

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

APPX. A.
Part I.
No. 2.

This writ was issued by the said plaintiff, who resides at....., *or*, this writ was issued by E. F., of....., solicitor for the said plaintiff,....., *or*, this writ was issued by G. H., of....., agent for..... of....., solicitor for the said plaintiff.

Indorsement to be made on the writ after service thereof.

This writ was served by me at....., on the defendant....., on....., the..... day of..... 19..

Indorsed the..... day of....., 19..

(Signed,)

(Address,)

No. 2.

SPECIALLY INDORSED WRIT, ORDER III, RULE 5. (O. 2, r. 3.)

19... (*Here put the letter and number.*)

In the Supreme Court.

Between....., Plaintiff.

and

....., Defendant.

VICTORIA, by the Grace of God, &c.

To, of....., in the County of.....:

We command you, That within ten days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of..... And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Issued the..... day of....., A. D. 19..

N. B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Prothonotary's office, at....., in the County of.....

Statement of Claim:—

The plaintiff's claim is.....

Particulars:—

Place of trial

(Signed,)

And the sum of \$....., (*or* such sum as may be allowed on taxation,) for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within six days from the service hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at....., (*or*) this writ was issued by E. F., of....., solicitor for the said

plaintiff,....., (*or*) this writ was issued by G. H., of.....,
agent for....., of....., solicitor for the said plaintiff.

APPX. A.
Part I.
Nos. 3, 4.

This writ was served by me at....., on the defendant.....,
on.....the.....day of....., 19..

Indorsed the.....day of....., 19..

(Signed,)

(Address,)

No. 3.

WRIT FOR SERVICE OUT OF THE JURISDICTION, OR WHERE
NOTICE IN LIEU OF SERVICE IS TO BE GIVEN OUT
OF THE JURISDICTION. (O. 2, r. 5.)

19... (*Here put the letter and number.*)

In the Supreme Court of Nova Scotia.

Between A. B., Plaintiff,
and
C. D. and E. F., Defendants.

VICTORIA, by the Grace of God, &c.

To C. D., of.....

We command you, C. D., That within (*here insert the number of days directed by the Court or Judge ordering the service or notice*) after the service of this writ (*or notice of the writ, as the case may be*) on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the Supreme Court at....., in the County of....., in an action at the suit of A. B.; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Issued, &c.

Memoranda and Indorsement as in Form No. 1.

Indorsement to be made on the writ before the issue thereof.

N. B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

No. 4.

SPECIALY INDORSED WRIT FOR SERVICE OUT OF THE JURISDICTION. (O. 2, r. 5.)

(*Heading as in Form 1.*)

VICTORIA, by the Grace of God, &c.

To....., of....., in the.....of.....

We command you, that within*.....days after servicet..... of this writ on you, inclusive of the day of such service, you do

* Insert no. of days directed by Court or Judge.

† If notice of the writ is to be served, insert here, "of notice"

Appx. A.
Part I.
No. 5.

cause an appearance to be entered for you in an action at the suit of.....

And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Issued, &c.

N. B.—This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Office of the Prothonotary at....., in the county of.....

Statement of Claim :—

'The plaintiff's claim is.....

Particulars :—

Place of trial.....

(Signed)

And \$....(or such sum as may be allowed on taxation) for costs. If the amount claimed is paid to the plaintiff or solicitor or agent within.....*days from the service† hereof, further proceedings will be stayed.

This writ was issued, &c.

This writ (or notice of this writ) was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

No. 5.

NOTICE OF WRIT, IN LIEU OF SERVICE, TO BE GIVEN OUT OF THE JURISDICTION. (O. 2, r. 5.)

(Heading as in Form 1.).

To G. H., of.....

Take notice that A. B., of....., has commenced an action against you, G. H., in the Supreme Court of Nova Scotia, by writ of that Court, dated the.....day of....., A.D. 19...; which writ is indorsed as follows (*copy in full the indorsements*), and you are required within.....days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action; and in default of your so doing, the said A.B. may proceed therein, and judgment may be given in your absence.

*Insert no. of days limited for appearance.

†If notice to be served, insert here "of notice."

You may appear to the said writ by entering an appearance personally or by your solicitor at the office of the Prothonotary at, in the County of.....

Appx. A.
Part II.
Nos. 1, 2.

(Signed) A. B., of , &c.
 or
 X. Y., of , &c.
Solicitor for A. B.

In the Supreme Court.

No. 6.

FORM OF MEMORANDUM FOR RENEWED WRIT. (O. 8, r. 1.)

(Heading as in Form I.)

Seal renewed writ of summons in this action indorsed as follows:—(*copy original writ and indorsements.*)

PART II.

FORMS OF ENTRY OF APPEARANCE.

No. 1.

MEMORANDUM OF APPEARANCE IN GENERAL. (O. 12, rr. 2, 6.)

In the Supreme Court.

[illegible]

Enter an appearance for.....in this action.

Dated the.....day of....., 19..

(Signed).....

of,

Agent for.....

of

No. 2.

NOTICE OF ENTRY OF APPEARANCE. (O. 12, r. 3.)

(Heading as in Form 1.)

Take notice that have this day entered an appearance at the Prothonotary's office at.....for the defendant to the writ of summons in this action.

APPX. A.
Part II.
Nos. 3, 4.

(If statement of claim is required, add) The said defendant require.....delivery of a statement of claim.

Dated the.....day of....., 19..

(Signed,)

of.....,

Agent for.....

Solicitor for the defendant.....

To

No. 3.

NOTICE LIMITING DEFENCE. (O. 12, r. 17.)

(Heading as in Form 1.)

Take notice, that the (*above-named*), defendant, (A. B.,) limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."

Dated the.....day of....., 19..

(Signed,)

of.....,

Agent for.....

of.....,

Solicitors for the above-named defendant.

To Messrs.....,

The Plaintiff's Solicitors.

No. 4.

ENTRY OF APPEARANCE LIMITING DEFENCE. (O. 12, r. 16.)

(Heading as in Form 1.)

Enter an appearance for the defendant in this action. The said defendant limits his defence to part only of the property mentioned in the writ of summons, namely, to the close called "The Big Field."

The address of.....is.....

Dated the.....day of....., 19..

(Signed,)

of.....,

Agent for.....

of.....

No. 5.

ENTRY OF APPEARANCE, Order XVI, Rule 50.

**APPX. A.
Part II.
Nos. 5, 6, 7.**

(Heading as in Form 1.)

Enter an appearance for to the notice in this action, on the day of, 19.., by the defendant under the Rules of the Supreme Court, Order XVI, Rule 50.

Dated the.....day of....., 19..

(Signed,)

of.....,

Agent for.....,

of.....

No. 6.

ENTRY OF APPEARANCE, Order XVII, Rule 5.

(Heading as in Form 1.)

Enter an appearance for....., who has been served with an order dated the..... day of.....to carry on and prosecute the proceedings in this action.

Dated the.....day of....., 19..

(Signed,)

of.....,

Agent for.....,

of.....

No. 7.

ENTRY OF APPEARANCE TO COUNTER-CLAIM. (O. 21, r. 13.)

(Heading as in Form 1.)

Enter an appearance for.....to the counter-claim of the above-named defendant,....., in this action.

Dated the.....day of....., 19..

(Signed,)

of.....,

Agent for.....,

of.....

Appx. A.
Part III.
No. I.

No. 8.

AFFIDAVIT FOR ENTRY OF APPEARANCE AS GUARDIAN.

(O. 16, r. 19.)

(Heading as in Form 1.)

I,, of, make oath and say as follows:—

A. B., of, is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action (*or matter*) adverse to that of the said infant, and the consent of the said A. B., to act as such guardian is hereto annexed.

Sworn, &c.

[To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.]

PART III.

**GENERAL INDORSEMENTS ON WRITS OF
SUMMONS. (O. 3, r. 3.)**

Section I.

IN MATTERS OF AN EQUITABLE NATURE.

1. Creditor to administer estate.

The plaintiff's claim is as a creditor of X. Y., of, deceased, to have the (real and) personal property of the said X. Y., administered. The defendant C. D., is sued as the administrator of the said X. Y., (and the defendants E. F., and G. H., as his co-heirs at law).

2. Legatee to administer estate.

The plaintiff's claim is as a legatee under the will dated theday of, 19.., of X. Y., deceased, to have the (real and) personal property of the said X. Y., administered. The defendant, C. D., is sued as the executor of the said X. Y., (and the defendants, E. F., and G. H., as his devisees.)

3. Partnership.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and the defendant (under articles of partnership dated theday of,) and to have the affairs of the partnership wound up.

4. Foreclosure.

The plaintiff's claim is for the foreclosure of a mortgage made bytoand dated theof lands at, and for the sale of such lands at public auction in payment of the amount due on the mortgage.

Amount of principal due,

\$ *

Interest to date of Writ,

Premiums of Insurance paid (*if any.*)

 \$

5. *Redemption.*

Appx. A.
Part III.
No. 2.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated.....and made between (*parties*), and to redeem the property comprised therein.

6. *Raising portions.*

The plaintiff's claim is that the sum of....., which by an indenture of settlement dated....., was provided for the portions of the younger children of....., may be raised.

7. *Execution of trusts.*

The plaintiff's claim is to have the trusts of an indenture dated....., and made between....., carried into execution.

8. *Cancellation or rectification.*

The plaintiff's claim is to have a deed dated....., and made between (*parties*), set aside or rectified.

9. *Specific performance.*

The plaintiff's claim is for specific performance of an agreement dated the.....day of....., for the sale by the plaintiff to the defendant of certain (*freehold*) hereditaments at.....

Section II.

MONEY CLAIMS WHERE NO SPECIAL INDORSEMENT UNDER ORDER III, RULE 5.

The plaintiff's claim is \$.....for the price of goods sold.

(*This Form shall suffice whether the claim is in respect to goods sold and delivered, or to goods bargained and sold.*)

The plaintiff's claim is \$.....for money lent (and interest.)

The plaintiff's claim is \$....., whereof \$.....is for the price of goods sold, and \$.....for money lent, and \$..... for interest.

The plaintiff's claim is \$..... for arrears of rent.

The plaintiff's claim is \$.....for arrears of salary as a clerk (*or as the case may be.*)

The plaintiff's claim is \$.....for interest upon money lent.

The plaintiff's claim is \$.....for a general average contribution.

The plaintiff's claim is \$.....for freight and demurrage.

The plaintiff's claim is \$.....for lighterage.

The plaintiff's claim is \$.....for market tolls and stallage.

The plaintiff's claim is \$.....for penalties under the statute.

(.....)
The plaintiff's claim is \$.....for money deposited with the defendant as a banker.

The plaintiff's claim is \$.....for fees for work done (*and* \$..... money expended) as a solicitor.

The plaintiff's claim is \$.....for commission earned as (*state character, as auctioneer, broker, &c.*)

The plaintiff's claim is \$.....for medical attendances.

The plaintiff's claim is \$.....for a return of premiums paid upon policies of insurance.

The plaintiff's claim is \$.....for the warehousing of goods.

The plaintiff's claim is \$.....for the carriage of goods by railway.

The plaintiff's claim is \$.....for the use and occupation of a house.

The plaintiff's claim is \$.....for the hire of (*furniture.*)

Appx. A.
Part III.
No. 2.

The plaintiff's claim is \$..... for work done as a surveyor.

The plaintiff's claim is \$..... for board and lodging.

The plaintiff's claim is \$..... for the board, lodging and tuition of X. Y.

The plaintiff's claim is \$..... for money received by the defendant as solicitor (*or factor, or collector, or, &c.,*) of the plaintiff.

The plaintiff's claim is \$..... for fees received by the defendant under colour of the office of.....

The plaintiff's claim is \$..... for a return of money overcharged for the carriage of goods by railway.

The plaintiff's claim is \$..... for a return of fees overcharged by the defendant as.....

The plaintiff's claim is \$..... for a return of money deposited with the defendant as stakeholder.

The plaintiff's claim is \$..... for money entrusted to the defendant as stakeholder, and payable to plaintiff.

The plaintiff's claim is \$..... for a return of money entrusted to the defendant as agent of the plaintiff.

The plaintiff's claim is \$..... for a return of money obtained from the plaintiff by fraud.

The plaintiff's claim is \$..... for a return of money paid to the defendant by mistake.

The plaintiff's claim is \$..... for a return of money paid to the defendant for (work to be done, left undone; *or* a bill to be taken up, not taken up, *or* &c.)

The plaintiff's claim is \$..... for a return of money paid as a deposit upon shares to be allotted.

The plaintiff's claim is \$..... for money paid for the defendant as his surety.

The plaintiff's claim is \$..... for money paid for rent due by the defendant.

The plaintiff's claim is \$..... upon a bill of exchange accepted (*or* indorsed) for the defendant's accommodation.

The plaintiff's claim is \$..... for a contribution in respect to money paid by the plaintiff as surety.

The plaintiff's claim is \$..... for a contribution in respect to a joint debt of the plaintiff and the defendant paid by the plaintiff.

The plaintiff's claim is \$..... for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff.

The plaintiff's claim is \$..... for money payable under an award.

The plaintiff's claim is \$..... upon a policy of insurance upon the life of X. Y., deceased.

The plaintiff's claim is \$..... upon a bond to secure a payment of \$1000 and interest.

The plaintiff's claim is \$..... upon a judgment of the Court in the State of Massachusetts.

The plaintiff's claim is \$..... upon a cheque drawn by the defendant.

The plaintiff's claim is \$..... upon a bill of exchange accepted (*or* drawn, *or* indorsed) by the defendant.

The plaintiff's claim is \$..... upon a promissory note made *or* indorsed) by the defendant.

The plaintiff's claim is \$..... against the defendant A. B., as acceptor, and against the defendant C. D., as drawer (*or* indorser) of a bill of exchange.

The plaintiff's claim is \$..... against the defendant as surety for the price of goods sold.

The plaintiff's claim is \$..... against the defendant A. B., as principal, and against the defendant C. D., as surety, for the price of goods sold (*or* arrears of rent, *or* for money lent, *or* for money received by the defendant A. B. as traveller for the plaintiff, *or* &c.)

The plaintiff's claim is \$..... against the defendant as a *del credere* agent for the price of goods sold (*or* as losses under a policy.)

The plaintiff's claim is \$..... for calls upon shares.

The plaintiff's claim is \$..... for crops, tillage, manure, (*or as the case may be*), left by the plaintiff as outgoing tenant of a farm.

Appx. A.
Part III.
Nos. 3, 4.

Section III.

INDORSEMENT FOR COSTS. (O. 3, 1. 6.)

Add to the above forms—

And \$..... for costs; and if the amount claimed is paid to the plaintiff or his solicitor within six days (*or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearance limited by the rules*) from the service thereof, further proceedings will be stayed.

Section IV.

DAMAGES AND OTHER CLAIMS.

The plaintiff's claim is that an account be taken of (*say what.*)

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller (and \$..... for arrears of wages.)

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor (*or, &c.,*) of the plaintiff (and \$..... for money received as factor, &c.)

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of X. Y. to the defendant (*or plaintiff.*)

The plaintiff's claim is for damages for non-compliance with the award of X. Y.

The plaintiff's claim is for damages for assault and false imprisonment (and for malicious prosecution.)

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, C. D.

The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.

The plaintiff's claim is for damages for negligence in the custody of goods (and for wrongfully detaining the same.)

The plaintiff's claim is for damages for negligence in the keeping of goods pawned (and for wrongfully detaining the same.)

The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire (*or a carriage lent*), (and for wrongfully, &c.)

The plaintiff's claim is for damages for wrongfully neglecting (*or refusing*) to pay the plaintiff's cheque.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a.....

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

Appx. A.
Part III.
No. 4.

The plaintiff's claim is for damages for breach of charter-party of ship ("Mary.")

The plaintiff's claim is for return of household furniture, (or &c.) or their value, and for damages for detaining the same.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.

The plaintiff's claim is for damages for libel.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is in replevin for goods wrongfully distrained.

The plaintiff's claim is for damages for improperly distraining.
[This form shall be sufficient, whether the distress complained of is wrongful or excessive, or irregular, and whether the claim is for damages only, or for double value.]

The plaintiff's claim is to recover possession of a house, No. in street (or of a farm called Blackacre), situated in the township of in the County of

The plaintiff's claim is to establish his title to (here describe property), and to recover the rents thereof.

(The two previous forms may be combined.)

The plaintiff's claim is for dower.

The plaintiff claim is for damages for infringement of the plaintiff's right of fishing,

The plaintiff's claim is for damages for fraudulent misrepresentation of the sale of a horse (or a business, or shares, or, &c.)

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of A. B.

The plaintiff's claim is for damages for breach of a contract of guarantee for A. B.

The plaintiff's claim is for damages for breach of contract to indemnify the plaintiff as the defendant's agent to distrain.

The plaintiff's claim is for a loss under a policy upon the ship "Royal Charter," and freight or cargo (or for return of premiums.)

[This form shall be sufficient whether the loss claimed is total or partial.]

The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

The plaintiff's claim is for damages for injury by the defendant's dog.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway station, from the defective condition of the station.

The plaintiff's claim is as executor of A. B., deceased, for damages for the death of the said A. B. from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

The plaintiff's claim is for damages for breach of promise of marriage.

The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery (*or* short delivery, *or* defective quality, *or* other breach of contract of sale) of cotton (*or*, &c.)

The plaintiff's claim is for damages for breach of warranty of a horse.

The plaintiff's claim is for damages for breach of contract to sell (*or* purchase) land.

The plaintiff's claim is for damages for breach of contract to let (*or* take) a house.

The plaintiff's claim is for damages for breach of a contract to sell (*or* purchase) the lease, with goodwill, fixtures, and stock in trade of a public house.

The plaintiff's claim is for damages for breach of covenant for title (*or* for quiet enjoyment, *or*, &c.,) in a conveyance of land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well, (*or* cutting his grass, *or* pulling down his timber, *or* pulling down his fences, *or* removing his gate, *or* using his road or path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel thence, *or* carrying away stones from his river.)

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land (*or* house *or* mine.)

The plaintiff's claim is for damages for wrongfully obstructing a way (*public highway or private way*.)

The plaintiff's claim is for damages for wrongfully diverting (*or* obstructing, *or* polluting, *or* diverting water from) a water-course.

The plaintiff's claim is for damages for wrongfully discharging water upon plaintiff's land (*or* into the plaintiff's mine.)

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. (*This form shall be sufficient whatever the nature of the right to pasture is.*)

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.

The plaintiff's claim is for damages for wrongfully using (*or* imitating) the plaintiff's trade mark.

The plaintiff's claim is for damages for breach of a contract to build a ship (*or* to repair a house, &c.)

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory (*or*, &c.)

The plaintiff's claim is for damages from nuisance by noise from the defendant's works (*or*, stables, *or*, &c.)

The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.

Add to indorsement (O. 53, 1. 2.):—

And for a mandamus commanding the defendant to.....

Add to indorsement:—

And for an injunction to restrain the defendant from.....

Add to indorsement where claim is to land, or to establish title, or both:—

Appx. B.
No. 1.

And for mesne profits.
And for an account of rents or arrears of rent.
And for breach of covenant for [*repairs.*]

Section V.

INDORSEMENTS OF CHARACTER OF PARTIES. (O. 3, r. 4.)

The plaintiff's claim is as executor [*or administrator*] of C. D., deceased, for, &c.

The plaintiff's claim is against the defendant, A. B., as executor [*or, &c.,*] of C. D., deceased, for, &c.

The plaintiff's claim is against the defendant A. B., as executor of X. Y., deceased, for, &c., and against the defendant, C. D., in his personal capacity, for, &c.

The plaintiff's claim is as trustee, or assignee under the statute, of A. B. for.....

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of A. B., [*or under the settlement upon the marriage of A. B. and X. Y., his wife.*]

The plaintiff's claim is against the defendant C. D., as heir-at-law, and against the defendant E. F., as devisee of lands under the will of A. B.

The plaintiff's claim is as well for the Queen as for himself, for.....

APPENDIX B.

NOTICES, &c.

No. 1.

THIRD PARTY NOTICE. (O. 16, r. 49.)

19.., (*Here put the letter and number.*)

In the Supreme Court.

Between A. B., Plaintiff,
and
C. D., Defendant.
Notice filed.....19...

To Mr. X. Y.:

Take notice that this action has been brought by the plaintiff, against the defendant (as surety for M. N.) upon a bond conditioned for payment of \$2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one half of any sum which the plaintiff may recover against him, on the ground that you are (his co-surety under the said bond, *or* also surety for the said M. N., in respect to the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A. D.)

Or (as acceptor of a bill of exchange for \$500, dated the day of , A. D., drawn by you upon, and accepted by, the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.

APPX. B.
Nos. 2, 3.

Or (to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect to the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent)

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant C. D., or your liability to the defendant C. D., you must cause an appearance to be entered for you within ten days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant C. D., and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, Order XVI, Part 6.

(Signed) C. D.

Or,

X. Y.,

Solicitor for the defendant C. D.

Appearance to be entered at

No. 2.

NOTICE OF COUNTER-CLAIM. (O. 21, r. 12.)

(*Heading as in Form 1.*)

To the within-named X. Y.

Take notice that if you do not appear to the within counter-claim of the within-named C. D. within ten days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

Appearance to be entered at

No. 3.

NOTICE OF PAYMENT INTO COURT. (O. 22, r. 4.)

(*Heading as in Form 1.*)

Take notice that the defendant has paid into Court \$, and says that that sum is enough to satisfy the plaintiff's claim (*or the plaintiff's claim for, &c.*)

To Mr. X. Y.,
the plaintiff's solicitor.

Z,

Defendant's solicitor.

No. 4.**Appx. B.****Nos. 4, 5, 6, 7.**

ACCEPTANCE OF SUM PAID INTO COURT. (O. 22, r. 7.)

(Heading as in Form 1.)

Take notice that the plaintiff accepts the sum of \$ paid by you into court in satisfaction of the claim in respect to which it is paid in.

No. 5.

CONFESSION OF DEFENCE. (O. 24, r. 3.)

(Heading as in Form 1.)

The plaintiff confesses the defence stated in the paragraph of the defendant's defence (*or of the defendant's further defence.*)

No. 6.

INTERROGATORIES. (O. 30, r. 4.)

19.., (*Here put the letter and number.*)

In the Supreme Court.

Between A. B., plaintiff,
and

C. D., E. F., and G. H., defendants.

Interrogatories on behalf of the above-named (*plaintiff or defendant C. D.*) for the examination of the above-named (*defendants E. F. and G. H., or plaintiff.*)

1. Did not, &c.
2. Has not, &c.
&c., &c., &c.

(The defendant E. F. is required to answer the interrogatories numbered.....)

(The defendant G. H. is required to answer the interrogatories numbered.....)

No. 7.

ANSWER TO INTERROGATORIES. (O. 30, r. 9.)

(Heading as in Form 6.)

The answer of the above-named defendant, E. F., to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

.....

.....

No. 8.

AFFIDAVIT AS TO DOCUMENTS. (O. 30, r. 13.)

Appx. B.
Nos. 8, 9.*(Heading as in Form 1.)*

I, the above-named defendant, C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That *(here state upon what grounds the objection is made, and verify the facts as far as may be.)*

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on *[state when.]*

6. That *[here state what has become of the last-mentioned documents, and in whose possession they now are.]*

7. According to the best of my knowledge, information, and belief, I have not now, and never had, in my possession, custody, or power, or in the possession, custody or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 9.

NOTICE TO PRODUCE DOCUMENTS. (O. 30, r. 16.)

(Heading as in Form 1.)

Take notice that the *(plaintiff or defendant)* requires you to produce for his inspection the following documents referred to in your *[statement of claim, or defence, or affidavit, dated the day of, A. D.,.....]*

Describe documents required.

X. Y.,

Solicitor to the

To Z.,

Solicitor for

Appx. B.
Nos. 10, 11.

No. 10.

NOTICE TO INSPECT DOCUMENTS. (O. 30, r. 17.)

[*Heading as in Form 1.*]

Take notice that you can inspect the documents mentioned in your notice on the day of, A. D. (*except the deed numbered in that notice*) at (*insert place of inspection*) on Tuesday next, the inst., between the hours of 12 and 4 o'clock.

Or, that the (*plaintiff or defendant*) objects to giving you inspection of the documents mentioned in your notice of the day of, A. D. on the ground (*state the objection*):—

No. 11.

NOTICE TO ADMIT DOCUMENTS. (O. 31, r. 3.)

(*Heading as in Form 1.*)

Take notice that the plaintiff (*or defendant*) in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (*or plaintiff*) his solicitor or agent, at, on, between the hours of; and the defendant (*or plaintiff*) is hereby required, within forty-eight hours from the last mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed.)
E. F., Solicitor (*or agent*) for
defendant (*or plaintiff*.)

To G. H., Solicitor (*or agent*) for plaintiff (*or defendant*.)

[*Here describe the documents, the manner of doing which may be as follows:*]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between A. B. and C. D. first part, and E. F. second part	January 1, 1848.
Indenture of lease from A. B. to C. D.	February 1, 1848.
Indenture of release between A. B. and C. D. first part, &c.	February 2, 1848.
Letter, defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship "Isabella" from Oporto to London	December 3, 1847.
Memorandum of agreement between C. D., captain of said ship, and E. F.	January 1, 1848.
Bill of exchange for \$100 at three months, drawn by A. B. on and accepted by C. D., indorsed by E. F. and G. H.	May 1, 1849.

COPIES.

Appx. B.
Nos. 12, 13.

Description of Documents.	Dates.	Original or Duplicate served sent or delivered, when, how and by whom.
Register of Baptism of A. B., in the parish of X.	January 1, 1848.	
Letter—plaintiff to defendant	February 1, 1848.	Sent by general post, February 2, 1848.
Notice to produce papers ...	March 1, 1848.	Served March 2, 1848, on defendant's solicitor by E. F., of
Record of a Judgment of the Supreme Court in an action, F. S. v. F. N.	March 2, 1848.	
Grant under the Great Seal of Nova Scotia.	January 1, 1780.	

No. 12.

NOTICE TO ADMIT FACTS. (O. 31, r. 5.)

[Heading as in Form 1.]

Take notice that the plaintiff (*or* defendant) in this cause requires the defendant (*or* plaintiff) to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant (*or* plaintiff) is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G. D., solicitor (*or* agent) for the plaintiff
(*or* defendant.)

To E. F., solicitor (*or* agent) for the defendant (*or* plaintiff.)

The facts, the admission of which is required, are:

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

No. 13.

ADMISSION OF FACTS PURSUANT TO NOTICE. (O. 31, r. 5)

[Heading as in Form 1.]

The defendant (*or* plaintiff) in this cause, for the purposes of this cause only, hereby admits the several facts respectively hereunder specified, subject to the qualifications or limitations, if any, hereunder specified, saving all just exceptions to the admissibility of such facts, or any of them, as evidence in this cause.

Provided that this admission is made for the purposes of this action only, and is not an admission to be used against the defend-

Appx. B.
Nos. 14-16.

ant, (*or plaintiff*), on any other occasion, or by anyone other than the plaintiff, *or defendant (or party requiring the admission.)*

Delivered, &c.

E. F., solicitor (*or agent*), for the defendant,
(*or plaintiff.*)

To G. H., solicitor (*or agent*) for the plaintiff (*or defendant*).

Facts admitted.	Qualifications or Limitations, if any, subject to which they are admitted.
1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

No. 14.

NOTICE TO PRODUCE (GENERAL FORM.) (O. 31, r. 8)

[*Heading as in Form 1.*]

Take notice, that you are hereby required to produce and show to the Court on the trial of this.....all books, papers, letters, copies of letters, and other writings and documents in your custody, possession or power, containing any entry, memorandum, or minute relating to the matters in question in this....., and particularly.....

Dated theday of.....19....

To the above-named } (Signed),

h solicitor or agent . } of.....,
solicitor for the above-named.

No. 15.

ISSUE. (O. 33, r. 8.)

[*Heading as in Form 1.*]

Whereas A. B. affirms, and C. D. denies (*here state the question or questions of fact to be tried*), and it has been ordered by the Hon. Mr. Justice.....that the said question shall be tried (*here state mode of trial, whether with or without a jury*), therefore let the same be tried accordingly,

No. 16.

NOTICE OF TRIAL. (O. 34, r. 12.)

[*Heading as in Form 1.*]

Take notice of trial of this..... (*or of the issues in this.....* ordered to be tried (*or as the case may be*) in.....(*or as the case may be*), for theday of.....next.

X. Y. plaintiff's solicitor (*or as the case may be.*)

Dated.....

To Z., defendant's solicitor (*or as the case may be.*).

No. 16. A.

NOTICE OF TRIAL WITHOUT PLEADINGS. (O. 18a.)

Appx. B.
Nos. 16 A—19.

Take notice of trial of this cause without pleadings in Halifax
[or as the case may be] for the.....day of.....next.

X. Y., plaintiff's solicitor [or as the case may be].

Dated.....

To Z., defendant's solicitor [or as the case may be.]

No. 18.

NOTICE OF MOTION. (O. 52.)

(Heading as in Form 1.)

Take notice, that the Court will be moved.....on.....
day the.....day of.....19..at.....o'clock in the forenoon,
or so soon thereafter as counsel can be heard, by.....that.....

Dated the.....day of....., 19..

(Signed),
of.....,
agent for.....,
solicitor for the.....

To.....

No. 19.

NOTICE OF DISCONTINUANCE. (O. 26, 1. I.)

(Heading as in Form 1.)

Take notice, that the plaintiff hereby*.....
†.....

Dated the....day of...., 19..

(Signed),
of.....,
agent for.....,
solicitor for the plaintiff.

To.....

* "Wholly discontinues this action," or "withdraws so much of his claim in this action as relates to," &c.

† If not against all the defendants add "as against the defendant," &c.

No. 20.**APPX. B.****NO. 20—22.** NOTICE OF CROSS-EXAMINATION OF DEONENTS AT TRIAL.
(O. 36, r. 28.)*(Heading as in Form 1.)*

Take notice that the.....intend..at the trial of this action to cross-examine the several deponents named and described in the schedule hereto on their affidavits therein specified.

And also take notice that you are hereby required to produce the said deponents for such cross-examination before the court aforesaid.

Dated.....day of....., 19..

(Signed),
Agent for.....,
of.....,
Solicitor for the.....

To.....

The Schedule above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit filed.

No. 21.

NOTICE OF RENEWAL OF WRIT OF EXECUTION. (O. 40, r. 20.)

(Heading as in Form 1.)

Take notice, that the writ of.....issued in this action directed to the Sheriff of....., and bearing date the.....day of, 19.., has been renewed for one year from the.....day of, 19..

Dated the....day of....., 19..

(Signed),
of.....,
Agent for.....,
Solicitor for the.....

To the Sheriff of.....

No. 22.

AFFIDAVIT OF SERVICE OF SUMMONS. (O. 54, r. 5, O. 13, r. 2.)

(Heading as in Form 1.)

I,....., of....., solicitor for the above-named....., make oath and say as follows:—

I did on the....day of....., 19.., before the hour of..... in the....noon, serve....., the above-named.....in this action with a true copy of the summons hereto annexed marked A.

by leaving it at the.....of the said.....situated.....with
.....there.....

Sworn at..... }
....., this.....day }
of....., 19.. }
Before me,

Appx. B.
Nos. 23, 24.

This affidavit is filed on behalf of the.....

No. 23.

AFFIDAVIT IN SUPPORT OF GARNISHEE ORDER. (O. 43, r. 1.)

In the Supreme Court

Between....., Judgment Creditor, and..... 19.... No....
Judgment Debtor.

I,, of....., the above-named judgment creditor
[or solicitor for the above-named judgment creditor] make oath
and say as follows:—

1. By a judgment of the Court given in this action, and dated
the.....day of....., 19...., it was adjudged that I [or the above-
named judgment creditor] should recover against the above-named
judgment debtor...the sum of \$....and costs to be taxed, and the
said costs were allowed at \$.....

2. The said....still remains unsatisfied to the extent of \$....
and interest amounting to \$.....

3. *..... is indebted to the judgment
debtor in the sum of \$...., or thereabouts.

4. The said is within the jurisdiction of this Court.
Sworn, &c.

*Name, address and description of garnishee.

No. 24.

AFFIDAVIT ON INTERPLEADER. (O. 56, r. 2.)

(*Heading as in Form 1.*)

I,of....., the defendant in the above action, make oath
and say as follows:

1. The writ of summons herein was issued on the.....day of
....., 19...., and was served on me on the.....day of....., 19..

2. The action is brought to recover..... The said.....* in
my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been
and is claimed † by one....., who†.....

4. I do not in any manner collude with the said.....or with
the above-named plaintiff, but I am ready to bring into Court or to
pay or dispose of the said.....in such manner as the Court orders
or directs.

Sworn, &c.

* "Is" or "are."

† If claim in writing, make the writing an exhibit.

‡ State expectation of suit or that he has already sued.

Appx. C.**No. 25.****s. I.****NOTICE OF CLAIM TO GOODS TAKEN IN EXECUTION. (O. 56, r. 16.)**

Take notice that A. B. has claimed the goods (*or* certain goods) [*where only certain goods are claimed here enumerate them*] taken in execution by the sheriff of....., under the execution issued in this action. You are hereby required to admit or dispute the title of the said A. B. to the said goods and give notice thereof in writing to the said sheriff within four days from the receipt of this notice, failing which the said sheriff may issue an interpleader summons. If you admit the title of the said A. B. to the said goods and give notice thereof in manner aforesaid to the said sheriff you will only be liable for any fees and expenses incurred prior to the receipt of the notice admitting the claim.

Dated, &c.

(Signed)

To the plaintiff.

Sheriff of.....

No. 26.**NOTICE OF PLAINTIFF OF ADMISSION OR DISPUTE OF TITLE OF CLAIMANT. (O. 56, r. 16.)**

Take notice that I admit (*or* dispute) the title of A. B. to the goods [*or* to certain of the goods, namely (*set them out*)] seized by you under the execution issued under the judgment in this action.

(Signed)

Plaintiff

To the sheriff of ———, }
and his officers.

or
Solicitor.

APPENDIX C.**FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX, RULE 5.****GENERAL INDORSEMENTS ON WRITS OF SUMMONS.****Section I.**

19.. *Here put the letter and number.*

In the Supreme Court.

Writ issued the.....of....., 19..

Between A. B., Plaintiff,

and

C. D., Defendant.

Statement of Claim.

The plaintiff, &c.

(*or*),

The plaintiff's claim is, &c.

(*To be filled up in manner exemplified in the following forms.*)

The plaintiff claims (*as in following forms.*)

Place of trial,.....

(Signed) |

Delivered the.....of....., 19..

APPX. C.

s. II.

Nos. 1, 2

Section II.

ACTIONS OF AN EQUITABLE NATURE.

No. 1.

(Administration.)

The plaintiff is a creditor of X. Y., deceased, of whom the defendant, C. D., is executor (*or administrator*), and the defendant E. F., is heir-at-law (*or devisee*.)

Particulars of the claim :

Principal due on the bond of the testator (<i>or intestate</i>)	
dated the.....of.....19....	\$2,000 00
Interest from the.....day of.....at 6 per cent.	250 00
	<hr/> \$2,250 00

The plaintiff claims to be paid the amount due to him, or to have the real and personal estate of the said X. Y. administered.

(Signed)

Delivered.....

No. 2.

(Wilful Default.)

1. The plaintiff is residuary legatee of A. B. of the city of Halifax, who died March 3rd, 1882, having made his will dated March 2nd, 1882, and appointed the defendants his executors, who proved his will April 6, 1882.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

C. D. owed to the testator \$1,000, in respect to which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to C. D. for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims :

(1.) Account of testator's personal estate on footing of wilful default.

(2.) Administration of the testator's personal estate.

(Signed)

Delivered.....

Appx. C.

8. II.

Nos. 3--5.

No. 3.*(Dissolution of Partnership.)*

1. The plaintiff, on December 20th, 1875, entered into partnership articles with the defendant for ten years.
2. The defendant has broken the partnership articles as follows :

(a)

(b)

(c)

The plaintiff claims :

- (1.) Dissolution.
- (2.) Accounts and inquiries.
- (3.) A receiver and manager.

(Signed)

Delivered

No. 4.*(For Accounts.)*

1. The plaintiffs are executors of A., deceased:
2. From the year 1878 till his death A. employed the defendant as his confidential agent in the management of a large building estate at X.
3. The defendant as such agent received large sums of money for the said A., for which he refuses to account.

The plaintiffs claim :

(1.) Accounts of all sums received and paid by the defendant as agent of A

(2.) Payment of the amount found due.

(Signed)

Delivered

No. 5.*(Foreclosure and Sale.)*

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage :
 - a. (*Date, and names of mortgagor and mortgagee.*)
 - b. (*Sum secured.*)
 - c. (*Rate of Interest.*)
 - d. (*Property subject to mortgage.*)
 - e. (*Amount now due.*)

*(If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.)**(If the plaintiff is mortgagee in possession add :)*

The plaintiff took possession of the mortgaged property on the of, and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession.)

Appx. C.
s. II.
Nos. 6, 7.

Delivered (Signed,)

No 6.

(Redemption.)

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee.

2. The following are the particulars of the mortgage :

- a. (Date.)
- b. (Sum secured.)
- c. (Rate of interest.)
- d. (Property subject to mortgage.)

(If the plaintiff's title is derivative, state shortly the deeds under which he claims.)

(If the defendant is mortgagee in possession add):

3. The defendant has taken possession (or has received the rents of the mortgaged property.)

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him, (and to have possession thereof.)

Delivered (Signed,)

No. 7.

(For raising portions or other charges on lands.)

1. By a settlement on the marriage of A. B. and C. B., dated January 10, 1850, Whiteacre was demised to trustees for 99 years, on trust after the deaths of A. B. and C. B. to raise \$5,000 for the younger children of the marriage who should attain 21.

2. A. B. died February 15, 1870.

3. C. B. died June 10, 1875.

4. There were 5 children only of the marriage of A. B. and C. B., all of whom are now living and have attained 21. The plaintiff is the second born child.

5. The defendants were on April 5, 1877, appointed trustees of the settlement.

The plaintiff claims :

1. To have \$5,000 raised by sale or mortgage and distributed among the persons entitled.

Delivered (Signed,)

APPX. C.
 No. II.
 Nos. 8, 9.

No. 8.

(Sale and Distribution of proceeds of property subject to any lien or charge.)

1. On November 12, 1880, A. and the defendant B. deposited with the plaintiff 500 United States bonds as security for a debt of \$. and interest at 6 per cent. due from A. and the defendant B. to the plaintiff.

2. A. died March 12, 1881.

3. On March 30, 1881, administration of the estate of A. was granted to the defendant C.

4. \$800 and \$30 for interest is owing to the plaintiff on the security of the said bonds.

The plaintiff claims :

- (1.) Sale of the said bonds.
- (2.) Application of the proceeds in payment of his debt.
- (3.) Distribution of the surplus among the parties entitled.

(Signed,)

Delivered

No. 9.

(Breach of Trust.)

1. By a settlement dated July 3rd, 1872, on the marriage of the plaintiffs' father and mother, of which the defendant A. B. and one C. D. were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1874, C. D. died, and the defendant E. F. was appointed in his place.

3. On December 1, 1879, the plaintiffs' father died.

4. On January 1, 1880, the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by :

- (a.) Sale of \$3000 bank stock and investment of the proceeds in the business of the defendant A. B.
- (b.) Sale of leasehold properly worth \$5000 to G. H. for \$1000 (without taking any proper steps to ascertain its value or to obtain such value.)

The plaintiff claims :

- (1.) The replacement of \$3000 bank stock and 6 per cent. interest on the proceeds of the bank stock sold, from the date of sale till replacement.
- (2.) Payment of \$4000 and interest at 6 per cent. per annum from the date of the sale.

(Signed,)

Delivered

No. 10.*(Execution of Trust.)*

Appx. C.
s. II.
Nos. 10, 11.

1. By a settlement dated June 10, 1856, upon trust for A. B. and C. B. successively for life, with remainder for their children who should attain 21, the following property was assured :

- a. A sum of \$5000 Dominion stock.
- b. \$4000 invested on mortgage of land at X.
- c. One fifth of the residuary estate of D., deceased, subject to a prior life-interest.

2. On August 15, 1862, C. B. died.

3. On February 18, 1875, A. B. died.

4. On September 10, 1879, D. died.

5. A. B. and C. B. had five children only, of whom the plaintiff is one.

6. The defendants are the present trustees of the settlement.

The plaintiff claims :

- (1.) Execution of the trusts of the settlement.
- (2.) All necessary accounts and inquiries.
- (3.) A receiver.

(Signed,)

Delivered

No. 11.*(For Rectification of Instruments.)*

1. In 1865 a marriage was arranged between A. B. and the plaintiff.

2. By an agreement contained in two letters, dated February 10 and 12, 1865, it was agreed between C. B., the father of A. B., and D., the father of the plaintiff, that each should settle \$10,000 on trust, for A. B. and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.

3. By letter, dated March 7, 1865, from D. to Messrs. E. & Co., his solicitors, he instructed them to prepare a settlement.

4. A settlement, dated April 25, 1865, was executed upon the marriage of A. B. and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of A. B.

5. On May 20, 1882, A. B. died.

6. The defendants H. and K. are the present trustees of the settlement.

7. The defendants, L., M. and N., are the only children of the marriage.

The plaintiff claims :

Rectification of the settlement.

(Signed,)

Delivered

Appx. C.
 s. II.
 Nos. 12, 13.

No. 12.

(*Specific Performance.*)

1. By an agreement (*or* letters) dated (*or* made verbally at interviews on or about) the.....day....., the plaintiff agreed to sell to the defendant the Home Farm, Annapolis, for \$..... The sale was to be completed on the.....of.....

(*If the agreement was verbal, add,*

2. The agreement so entered into has been part performed as follows (*state how.*)

The plaintiff claims specific performance of the above agreement, and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff (*stating in each case what the defendant is required specifically to do.*)

(Signed,)

Delivered.....

No. 13.

(*Partition or sale of Real Property.*)

1. By will, dated January 5, 1864, A. devised Whiteacre to B., C., and D. as tenants in common.

2. On March 10, 1865, A. died.

3. On March 20, 1865, A.'s will was proved.

4. On June 25, 1867, B. conveyed to the plaintiff his share of Whiteacre.

5. On July 30, 1869, C. conveyed his share to the defendants on trust for sale.

6. By will, dated November 5, 1872, D. devised his share among his children equally.

7. On December 2, 1872, D. died.

8. On December 15, 1872, D.'s will was proved.

9. There were 10 children of D. living at his decease, some of whom have since died.

10. Whiteacre consists of a mansion house and grounds.

11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.

The plaintiff claims:

A division of Whiteacre among the parties interested, (*or* a sale of Whiteacre and a distribution of the proceeds among the parties interested.)

(Signed,)

Delivered.....

No. 14.*(Wardship of infants and care of infants' estates.***Appx. C.
S. III.
Nos. 1, 2.**

1. By will, dated August 10, 1882, A devised Whiteacre and \$10,000 to defendant on trust for plaintiff.

2. On August 15, 1882, A. died.

3. On August 30, 1882, probate was granted to the defendant, the sole executor.

4. The plaintiff is an infant 12 years old.

The plaintiff claims :

(1.) That the plaintiff may become a ward of Court.

(2.) Administration of the trusts of the will of A. so far as necessary.

(Signed,)

Delivered

Section III.*(Special Indorsements.)*

ACTIONS INCLUDED IN ORDER III, RULE 5, CLASSES A., B., C., D., E., AND F.

No. 1.*(Goods sold and Delivered.)*

The plaintiff's claim is for the price of goods sold and delivered.

Particulars :—

1881—31st December,—

Balance of account for butcher's meat to this date \$135 00

1882—1st January to 31st March,—

Butcher's meat 72 50

\$207 50

1882—1st February—Paid 45 00

Balance due \$162 50

Place of trial, Halifax.

(Signed)

Delivered

No. 2.*(Money had and received.)*

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars :—

1882—1st January,—

Appx. C.
S. III.
Nos. 3—5.

To amount of rents of No. 5 Smith St., collected by the defendant.....	\$200 00
To deposit on intended sale of Eva Villa.....	100 00
Amount due.....	<u>\$300 00</u>

Place of trial, Halifax.

(Signed)

Delivered

No. 3.

(Payee against maker of a promissory note.)

The plaintiff's claim is against the defendant as maker of a promissory note for \$250, dated 1st January, 1882, payable four months after date.

Particulars :—

Principal.....	\$250 00
Interest.....	10 00
Amount due.....	<u>\$260 00</u>

Place of trial, Port Hood, Inverness Co.

(Signed,)

Delivered

No. 4.

(Indorsee against acceptor of bill of exchange.)

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for \$400, dated 1st January, 1882, drawn by A. B., payable three months after date to the order of E. F., and indorsed to the plaintiff.

Particulars :—

Principal due.....	\$400 00
Interest.....	16 00
Amount due.....	<u>\$416 00</u>

(Signed)

Delivered

No. 5.

(Indorsee against acceptor and drawer of a bill of exchange severally.)

The plaintiff's claim is against the defendant A. B., as acceptor, and against the defendant, C. D., as drawer, of a bill of exchange for \$500, dated 1st January, 1882, payable three months after date, and indorsed by the defendant, C. D., to the plaintiff, of the dishonor of which on presentation the defendant, C. D., had notice.

Particulars :—

Principal	\$500 00	Appx. C. Nos. 6—8. S. III.
Interest	20 00	
Amount due	<u>\$520 00</u>	

Place of trial, Town of Picton.

(Signed,)

Delivered

No. 6.*(Payee against drawer of a bill of exchange, excusing notice of dishonor.)*

The plaintiff's claim is against the defendant as drawer of a bill of exchange for \$600, dated 1st March, 1882, drawn upon A. B., payable to the plaintiff three months after date, which was duly presented for payment and dishonored, but A. B. had no effects of the defendant, nor was there any consideration for the payment of the said bill by the said A. B.

Particulars (as in Form 4.)

Place of trial

(Signed,)

Delivered

No. 7.*(Obligee against obligor of a money bond.)*

The plaintiff's claim is for principal and interest due on the defendant's bond to the plaintiff, dated 1st January, 1873, conditioned for payment of \$200, on the 26th December, 1873.

Particulars :—

Principal	\$150 00
Interest	2 00
Amount due	<u>\$152 00</u>

Place of trial, Truro.

(Signed,)

Delivered

No. 8.*(Covenantee against covenantor on a covenant to pay money.)*

The plaintiff's claim is for principal and interest, due under a covenant in a deed, dated the 1st of January, 1882.

Appx. C.
s. III.
Nos. 9, 10.

Particulars :—

Principal	\$500 00
Paid	20 00
Principal due	\$480 00
Interest	3 00
Amount due	<u>\$483 00</u>

Place of trial, Halifax.

(Signed,)

Delivered

No. 9.

(On a guarantee for the price of goods, setting out the guarantee.)

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F., under the following guarantee :—

2nd February, 1882.

SIR,—

In consideration of your supplying goods to E. F., I undertake to see you paid.

Yours, &c.,

C. D., defendant.

To Mr. A. B., (plaintiff.)

Particulars :—

1882.

25 March, 55 tons of coal at \$5..... \$275 00

Amount due

Place of trial,

(Signed,)

Delivered

No. 10.

(Creditor against principal debtor and his surety severally on a guarantee for goods sold.)

The plaintiff's claim is against the defendant A. B., as principal, and against the defendant C. D., as surety, for the price of goods sold and delivered by the plaintiff to A. B., on the guarantee by C. D., dated the 2nd of February, 1882.

Particulars :—

2nd February—Goods	\$200 00
3rd March—Goods	100 00
17th March—Goods	80 00
5th April—Goods	30 00
Amount due	<u>\$410 00</u>

Place of trial, Windsor.

(Signed,)

Delivered

No. 11.

(Debt upon a trust.)

**Appx. C.
s. IV.
Nos. 1, 2.**

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of A. B. and X. Y., dated January 1st, 1870, whereby \$10,000 invested on mortgage of land at Z. was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars :—

1882, December 25th, half a year's income \$300 00

No. 12.

(Landlord against tenant.)

See Sect. VI., Form No. 1.

Section IV.

ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY
ARISING OUT OF CONTRACT.

No 1.

(Buyer against seller of goods for not delivering.)

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of pig iron at \$20 per ton, to be delivered on rail at Halifax, on the 15th of March, 1882.

2. The defendant did not deliver any (*or tons, as the case may be*) of the said iron.

Particulars of damage :—

Loss of profit at \$4 per ton on 100 tons \$400 00.

The plaintiff claims \$400.

Place of trial, Halifax.

(Signed,)

Delivered

No. 2.

(Buyer against seller of goods for delivering them inferior to contract.)

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant, for sale and delivery of 100 sacks of flour known as seconds at \$6 per sack.

Appx. C.
s. VI.
Nos. 3, 4.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage :

80 sacks at \$1	\$ 80 00
20 sacks at \$1.25	25 00
	<hr/> \$105 00

The plaintiff claims \$105.

Place of trial, Windsor.

(Signed)

Delivered

No. 3.

(Shipowner against charterer for detention beyond the demurrage days.)

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1882, between the plaintiff and the defendant, of the ship "Mary."

2. The ship was detained at the port of loading.

Particulars of damage :—

1882. Jan. 1	} 10 days' detention beyond the demurrage days at \$80 per day, \$800 00
to Jan. 10.	

The plaintiff claims \$800.

Place of trial, Halifax.

(Signed)

Delivered

No. 4.

(Shipper against master on a bill of lading for damage to goods.)

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the "Jane," signed by the defendant, dated the 1st of January, 1882.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage :—

50 bales at \$10	\$500 00
------------------------	----------

The plaintiff claims \$500.

Place of trial, Town of Pictou.

(Signed,)

Delivered

No. 5.

Appx. C.

s. IV.

Nos. 5—7.

(*Shipper against ship owner on a bill of lading, for damage and short delivery.*)

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff, signed by the master of the ship "Mary" as the defendant's agent, dated the 1st of January, 1882.

2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage :—

100 quarters at \$8.00	\$800 00
50 quarters at \$1.00	50 00
	<u>\$850 00</u>

The plaintiff claims \$850.00

Place of trial, Guysboro', in the co. of Guysboro'.

Delivered (Signed,)

No. 6.

(*On a marine policy against underwriters.*)

The plaintiff was interested to the amount of \$..... under a marine policy of insurance for that amount, dated the..... day of 18.., on the ship "Hero," subscribed by the defendant for \$.....

Particulars :—

1. Valued or open :—Valued at \$20,000.00.
2. Voyage :—At and from Cardiff to Valparaiso.
3. (*Or*, Time :—From noon of 1st January, 1882, to noon of 1st January, 1883).
4. Premium to defendant :—\$..... per cent.
5. Perils insured against causing loss :—Of the seas.
6. Loss :—Total (*or* exceeding 3 per cent.)

The plaintiff claims \$.....

Place of trial, Truro.

Delivered (Signed,)

No. 7.

(*Passenger against railway company for negligence.*)

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from New Glasgow to Antigonish, causing personal injuries to the plaintiff, in a collision near St. James River, on the 15th January, 1883:

APPX. C.
S. IV.
Nos. 8, 9.

Particulars of expenses, &c. :—

Loss of 15 weeks' salary as clerk, at \$10.00 per week	\$150 00
Dr. Smith	50 00
Nurse for 6 weeks.....	24 00
	<hr/>
	\$224 00

The plaintiff claims \$224.00.

Place of trial, Antigonish.

Delivered..... (Signed,)

No. 8.

(Client against solicitor for negligence.)

1. The plaintiff has suffered damage from the defendant's negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.
2. The negligence was in making an application under Order 14, Rule 1, in the case of A. B. (the plaintiff) vs. C. D., where the case was one of unliquidated damages and not of debt.

Particulars of damage :—

Taxed costs paid to defendant on dismissal of summons \$.

The plaintiff claims \$.

Place of trial.....

Delivered (Signed)

No. 9.

(Landlord against tenant for breach of covenant to repair.)

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1876, of a house No. 401 Bedford Row, for seven years from the 25th of December, 1875, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.
2. The premises were during the term out of such repair as was required by the covenant.
3. They were yielded up out of such repair at the expiration of the term.
4. Particulars of dilapidations were delivered to the defendant's solicitor on the.....of....., 18.., and exceed three folios.

The plaintiff claims \$.

Place of trial.....

Delivered (Signed,)

No. 10.*(Breach of Promise of Marriage.)*

Appx. C.
s. v.
Nos. 1, 2.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the.....of....., (*or* within a reasonable time, which elapsed before action), (*or*, on the death of A. B., which happened before action).

2. The defendant refused to marry the plaintiff on the.....of....., (*or*, within a reasonable time) (*or*, on the death of A. B.)

Particulars of special damage:—

(As the case may be, if any.)

The plaintiff claims \$.....

Place of trial.....

(Signed,)

Delivered.....

Section V.

ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT FOUNDED ON WRONGS.

No. 1.*(Conversion of Goods.)*

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand (*or*, throwing them out of a boat in the London Docks, &c.)

(If any damage is claimed, add)—

Particulars (*fill them in.*)

The plaintiff claims \$500.

Place of trial, Halifax.

(Signed,)

Delivered.....

No. 2.*(Detinue.)*

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness and gig.

The plaintiff claims a return of the said goods and chattels or their value, and \$100 for their detention.

Place of trial, Annapolis, in the county of Annapolis.

(Signed,)

Delivered.....

Appx. C.
s. v.
Nos. 3-5.

No. 3.*(Negligent Driving.)*

The plaintiff has suffered damage from personal injuries to the plaintiff and damage to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Granville Street.

Particulars of expenses, &c.:—

Charge of Mr. Smith, surgeon.....	\$100 00
Charge of Mr. Jones, coachmaker	80 00
	<hr/>
	\$180 00

The plaintiff claims \$180.

Place of trial, Halifax.

Delivered..... (Signed,)

No. 4.*(Fatal Injuries Act.)*

The plaintiff as executor of C. D., deceased, brings this action for the benefit of Eva, the wife, and William and Margaret and Dorothea, the children of C. D., (*as the case may be*), who have suffered damage from defendant's negligence in carrying the said C. D. by omnibus, whereby the said C. D. was killed in Kentville on the 15th January, 1882. Particulars pursuant to statute are delivered herewith.

Plaintiff claims \$1,000.

Place of trial, Halifax.

Delivered..... (Signed,)

No. 5.*(Collision of ships.)*

The plaintiff has suffered damage from injuries to his ship the "Betsy," and the cargo on board thereof, by a collision with the ship the "Jane," caused by the negligent navigation thereof by the defendant or his servants in the Harbor of Halifax, on the 1st of February, 1883.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, \$2,100.
3. Loss of use of ship from 1st February, 1883, to 1st of March, 1883, \$1,000.

Particulars of damage to cargo:—

(Insert them.)

The plaintiff claims \$.....

Place of trial, Halifax.

Delivered..... (Signed,)

No. 6.*(Injunction for infringement of patent.)*

Appx. C.
s. V.
Nos. 6-8.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of 14 years, from the 21st May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement, and \$500 damages.

Particulars of breaches are delivered herewith.

Place of trial, Amherst.

(Signed,)

Delivered

No. 7.*(Damages for infringement of copyright.)*

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the.....day of.....

Particulars of special damage are as follows:—

Loss of sale of 50 copies.....	\$250 00
Loss of profit in the copyright.....	250 00

\$500 00

The plaintiff claims \$500.

Place of trial, Windsor.

(Signed,)

Delivered

No. 8.*(Injunction for infringement of trade mark.)*

1. The defendant has infringed the plaintiff's trade mark.
2. The trade mark is (*describe it.*)

(If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.)

3. The following are the acts complained of, viz:

(Set them out.)

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from infringing the plaintiff's said trade mark, and in particular from (*stating any particular injunction sought.*)

The plaintiff also claims an account or damages.

(Signed)

Delivered

Appx. C.
s. V.
Nos. 9—11.

No. 9.

(Seduction.)

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of G. H., the (daughter and) servant of the plaintiff.

Particulars of special damage are as follows:—

Loss of service from the 1st of March, to the 30th November, 1882.....	\$200 00
Nursing and medical attendance.....	50 00
	<u>\$250 00</u>

The plaintiff claims \$250.

Place of trial, Lunenburg.

Delivered..... (Signed,)

No. 10.

(Obstruction of lights.)

1. The plaintiff is the owner (*or* lessee) and occupier of a house, 700 Park street, Halifax, in which are the following ancient lights—

- (1.) The kitchen window in the basement on the south side.
- (2.) The two back dining room windows on the ground floor on the south side.
- (3.) The landing window and back drawing room window on the south side.

2. The defendant is erecting a building, which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain, if the same is completed and not pulled down.

Delivered..... (Signed)

No. 11.

(Nuisance by smells.)

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling house, No. 15 James street, Truro,

The plaintiff claims :—

(1.) \$250.00.

(2.) An injunction to restrain the defendant from the continuance or repetition of the said injury or the committal of any injury of a like kind, in respect to the same property.

Appx. C.

s. V.

Nos. 12, 13.

Place of trial, Truro, in the County of Colchester.

(Signed,)

Delivered

No. 12.

(*Nuisance by pollution of water.*)

1. The plaintiff is the owner (*or lessee*) and occupier of a farm known as through which there runs a river known as

2. The defendant or persons in his employ pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situated higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works in to the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff, (*or as the case may be.*)

The plaintiff will also claim damages in respect to the said nuisance.

Place of trial

(Signed,)

Delivered

No. 13.

(*Fraudulent prospectus.*)

1. On 31st January, 1883, the defendant issued a prospectus to the public, relating to the A. B. Company, Limited.

2. On February 1st, 1883, the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars :—

(a.) The prospectus stated "..... whereas in fact....."

(b.) The prospectus stated "..... whereas in fact....."

(c.) The prospectus stated "..... whereas in fact....."

5. The defendant knew of the real facts as to the above particulars.

Appx. C.
s. V.
Nos. 14, 15.

6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus:—

- (a.)
(b.)

7. The plaintiff has paid calls to the Company to the extent :
of \$2,000.00.

The plaintiff claims :—

- (1.) Repayment of \$2,000.00 and interest.
(2.) Indemnity.

(Signed,)

Delivered

No. 14.

(Fraudulent sale of a lease.)

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the George Hotel, Windsor, by fraudulently representing to the plaintiff that the takings of the said hotel were \$80 a week, whereas in fact they were much less, to the defendant's knowledge.

Particulars of special damage :—

(Fill them in.)

The plaintiff claims \$.....

(Signed,)

Delivered

No. 15.

(Malicious prosecution.)

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Supreme Court, at Pictou, where the plaintiff was acquitted.

Particulars of special damage :—

Messrs. L. & L.'s bill of costs, \$300.

Loss in business from January 1, 1883, to February 18, 1883, \$500.

The plaintiff claims \$800.

Place of trial

(Signed,)

Delivered

Section VI.

ACTIONS FOR RECOVERY OF LAND, &C.

Appx. C.
s. VI.
Nos. 1, 2.

No. 1.

(Landlord against tenant whose term has expired.)

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm, in the Township of Clement, in the County of Annapolis, which was let by the plaintiff to the defendant for the term of three years, from the 29th of September, 1879, which term has expired (*or* as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1881.)

The plaintiff claims possession and \$200 for mesne profits.

Place of trial, Annapolis.

Delivered (Signed)

No. 2.

(Heir-at-law against stranger.)

1. The plaintiff is entitled to the possession of Blackacre, in the township of, (*or* of No. 2 Bridge street, Pictou,) in the County of

2. On or before the of, 18.., *A. B.* was seised in fee and in possession of the premises.

3. On the of, 18.., the said *A. B.* died so seised, whereupon:

4. The estate descended to the plaintiff, his eldest son, and heir-at-law.

5. After the death of the said *A. B.*, the defendant wrongfully took possession of the premises.

The plaintiff claims:

(1.) Possession of the premises.

(2.) Mesne profits from the of

Place of trial

Delivered (Signed,)

Appx. D.
8. I.

APPENDIX D.

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX, RULE 5.

Section I.

GENERAL FORM.

18.. No.....

In the Supreme Court.

Between, plaintiff,
and
....., defendant.

Defence.

The defendant says that:

1. }
2. } *(To be filled up in the manner exemplified in the*
3. } *following forms.)*

(Signed,)

Delivered.....

Counter-claim.

The defendant says that:

1. }
2. } *(To be filled up in the manner exemplified in the*
 following forms.)

(Signed,)

Delivered.....

The defendant counter-claims.

(Signed,)

Delivered.....

Defence and Counter-claim.

Defence.

The defendant says:—

1. }
2. } *(To be filled up.)*

Counter-claim.

The defendant repeats paragraph 2 of his defence, and says that:—

3. }
4. } *(To be filled up.)*

The defendant counter-claims.

(Signed)

Delivered.....

Section II.

TO ACTIONS OF AN EQUITABLE NATURE.

APPENDIX C., SEC. II.

Appx. D.
s. II.
No. 1.

(To actions for administration.)

1. The defendant does not admit the plaintiff's claim.

(or)
 The defendant, *A. B.*, admits the plaintiff's claim, but not assets.

(or)
 The defendant, *C. D.*, admits assets, but not the plaintiff's claim.

2. The claim is barred by the Statute of Limitations.

3. Payment was made by deceased.

4. The claim is fraudulent in the following particulars:

(Set out particulars.)

5. The defendant is entitled to a set off, of which the following are the particulars:

(Set out particulars.)

6. The claim was released by deed dated of

7. Notice was given and assets distributed under Cap.
 of

Particulars of the Notice.

Advertisements in the of January 1, 1880.

“ N. Y. Herald, Feb., 1881.

“ London Times, Jan. 25, 1881.

(Giving the titles of the newspapers and the dates of those in which the advertisement appeared.)

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.

9. The defendant is not heir-at-law or devisee of the deceased.

(Signed,)

Delivered

No 1.

(To actions for foreclosure by mortgagee.)

1. The defendant did not execute the mortgage.

2. The mortgage was not assigned to the plaintiff *(if more than one assignment is alleged, say which is denied.)*

3. The debt is barred by the Statute of Limitations.

4. Payments have been made, viz:

10 July, 1874, \$1,000.

18 October, 1875, \$500.

5. The plaintiff took possession on the of
 and has received the rents ever since.

Appx. D.
s. II.
No. 2.

6. The plaintiff released the debt by deed, dated 1 June, 1882.
7. The defendant conveyed all his interest to A. B., by deed dated 25 November, 1880.

The defendant claims:—

(1.) Account.

(2.) Re-conveyance.

(Signed,)

Delivered

No. 2.

(To same by alleged second incumbrancer, who claims priority.)

1.
2.
3.
4.
5.
6.

(As in preceding Form.)

7. By a deed dated 1st June, 1880, the mortgagor, A. B., mortgaged the property in question to the defendant to secure \$5,000, and interest at 5 per cent. per annum.

The defendant claims:—

1. A declaration of priority and foreclosure (and a receiver.)

(Signed,)

Delivered

(If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so, as in other cases of debt; or he can claim indemnity against the owner of the equity of redemption under Order XVI, Rule 49.)

(To actions for redemption.)

1. The plaintiff's right to redeem is barred by the Statute of Limitations.

2. The plaintiff assigned all interest in the property to A. B.

3. The defendant by deed, dated the.....day of....., assigned all his interest in the mortgage debt and property comprised in the mortgage to A. B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.)

(Signed,)

Delivered

(*To actions for specific performance.*)

Appx. D.
S. III.

1. The defendant did not enter into the agreement.
2. A. B. was not the agent of the defendant (*if alleged by plaintiff.*)
3. The plaintiff has not performed the following conditions.—(*Conditions.*)
4. The defendant did not.—(*Alleged acts of part performance.*)
5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters :—(*State why.*)
6. The Statute of Frauds has not been complied with.
7. The agreement is uncertain in the following respects.—(*State them.*)
8. (*or*) The defendant has been guilty of delay;
9. (*or*) The defendant has been guilty of fraud (*or misrepresentation*);
10. (*or*) The agreement is unfair;
11. (*or*) The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11), (*or as the case may be.*)

12. The agreement was rescinded under conditions of sale, No. 11, (*or, by mutual agreement.*)

(Signed,)

Delivered.....

(*In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other grounds of defence he intends to rely on; e. g., Statute of Limitations, accord and satisfaction, release, fraud, &c.*)

Section III.

TO ACTIONS INCLUDED IN ORDER III., RULE 5, CLASSES
A., B., C., D., E. AND F.

(*To actions on bills of exchange, promissory notes, or checks.*)

1. The defendant did not accept the bill.
 2. The defendant did not make the note.
 3. The defendant did not draw the check.
 4. The defendant did not indorse to A. B.
 5. The defendant (*or* A. B.,) did not indorse to the plaintiff.
 6. The bill was not presented for payment.
 7. The defendant had not due notice of dishonor.
- 33

Appx. D.
8. III.

8. The plaintiff was not the holder at the commencement of the action.

9. The bill was accepted (*or*, the note was made) for the accommodation of the defendant without consideration.

10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.

11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration, (*or*, with notice of the said fraud, *or* overdue.)

12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration (*or*, with notice of the fraud, *or*, overdue.)

Particulars of the fraud are as follows: The drawer on or about the 15th of May, 1882, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the "Ajax," which he had not done.

13. The defendant accepted the bill (*or*, made the note) for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1882, and the plaintiff failed to deliver the goods.

14. The bill (*or*, note, *or*, check) was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd January.

(Signed,)

Delivered.....

(To actions for any simple contract debts, other than bills, notes, or checks.)

1. The defendant did not order the goods.

2. The goods were not delivered to the defendant.

3. The price was not \$.....

(*or*)

4.	}	Except as to \$....., same as	{	1.
5.				2.
6.				3.

7. The defendant (*or*, A. B., the defendant's agent), satisfied the claim by payment before action to the plaintiff, (*or*, C. D., the plaintiff's agent), on the.....of....., 19..

8. The defendant satisfied the claim by payment after action to the plaintiff on the.....day....., 19..

(Signed,)

Delivered.....

(To actions on bonds or contracts under seal, for payment of a liquidated amount in money.)

Appx. D.
8. III.

1. The bond (*or deed*) is not the defendant's bond (*or deed*.)
2. The defendant made payment to the plaintiff, on the day according to the condition of the bond.
3. The defendant made payment to the plaintiff, after the day named and before action, of the principal and interest mentioned in the bond.

Delivered..... (Signed,)

[In actions on guaranties, whether under seal or not, where the claim against the principal is for a debt or liquidated demand only. *Ord. III., Rule 5. Class (D).*]

1. The principal satisfied the claim by payment before action.
2. The defendant was released by the plaintiff giving time to the principal debtor, in pursuance of a binding agreement.

Delivered..... (Signed,)

(To any action of debt.)

1. As to \$200 parcel of the money claimed, the defendant is entitled to set-off for goods sold and delivered by the defendant to the plaintiff. Particulars are as follows:—

1882, Jan. 25.	To 20 tons of.....coal at \$4.....	\$ 80 00
" Feb. 1.	To 30 tons of.....coal at \$4.....	120 00
Total.....		\$200 00

2. As to the whole (*or*, as to \$....., parcel of the money claimed), the defendant made tender before action (*or*, on the day on which it fell due) of \$....., and has paid the same into court.

Delivered..... (Signed,)

(General defences.)

1. On 5th April, 1882, a brown horse was delivered by the defendant to, and accepted by, the plaintiff in discharge of the alleged cause of action;

(*Or*, on 5th April, 1882, an agreement between the plaintiff and the defendant, whereby it was agreed between the plaintiff and the defendant that the defendant should deliver the cargo of the "Mary" at Pugwash, instead of at Halifax, as per charter-party of 1st March, 1882, was accepted in discharge of the alleged cause of action.)

2. The defendant became bankrupt.

3. The plaintiff became bankrupt before action, and the cause of action vested in the trustees of his property.

**APPX. D.
S. IV.**

4. The defendant was covert at the time of making the alleged contract, (*or, contracting the alleged debt.*)

5. The defendant was an infant at the time of making the alleged contract (*or, contracting the alleged debt.*)

6. The defendant as to the whole action, (*or, as to the sum of \$....., parcel of the money claimed, or, as to the plaintiff's claim on the guarantee of the.....of.....18....., (or as the case may be), has paid into Court \$....., and says that sum is enough to satisfy the plaintiff's claim (or, the plaintiff's claim herein pleaded to.)*

7. The causes of action were released by deed dated the 1st of May, 1882, between the plaintiff of the first part and the defendant of the second part.

8. The contract was rescinded (*or the defendant was exonerated by the plaintiff*) before breach. Particulars are as follows:—An arrangement between the plaintiff and the defendant, made verbally on the 15th of April, 1882, (*or, by letter from the defendant to the plaintiff and answer of the plaintiff dated the 14th and 15th April, 1882.*)

9. The debt was barred by the Statute of Limitations.

10. The 17th section of the Statute of Frauds has not been complied with.

(Signed,)

Delivered

Section IV.

TO ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY.—APPENDIX C., SECT IV.

1. The defendant did not contract (*or, promise, or, agree*), as alleged.

2. The defendant did not receive the goods for the alleged purpose (*or, on the alleged terms.*)

3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

4. The defendant did not (*insert breaches denied.*)

5. The defendant was not ready and willing to accept and pay for the goods (*or, to deliver the goods, or, as the case may be.*)

6. There was contributory negligence on the part of the plaintiff.

7. The plaintiff did not pay or tender the money for the carriage.

8. The damage or loss occurred from the inherent vice (*or, bad condition when received*) of the goods (*or, horse, or, as the case may be.*)

9. The loss occurred by reason of the excepted perils mentioned in the charter-party, (*or, bill of lading*), that is to say, the perils of the seas, (*or, fire, or as the case may be.*)

10. The charter-party was cancelled pursuant to cancelling clause therein, the ship not having arrived at port of loading on or before 1st May, 1882.

11. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

12. The loss was not by the perils insured against.

13. The plaintiff was not interested in the subject-matter of the insurance.

14. The ship was not seaworthy at commencement of risk (or, voyage).

15. The plaintiff was not ready and willing to marry the defendant.

(Signed,)

Delivered.....

Section V.

TO ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT, FOUNDED UPON WRONGS. APPENDIX C., SECT. V.

(To all Actions for Wrongs.)

1. Denial of the several acts (or, matters) complained of.
(Signed,)

Delivered

(To Actions for Detention or Conversion of Chattels.)

1. The goods (or chattels, or, as the case may be) were not the plaintiff's.

2. The goods were detained for a lien to which the defendant was entitled. Particulars are as follows:—

1882, May 3. To carriage of the goods claimed from London
to Birmingham :—
45 tons at 50c \$22 50

(Signed,)

Delivered.....

(To actions for personal bodily injuries, or injuries to carriages, goods or animals, by trespass or negligence.)

1. The defendant did the acts complained of in necessary self-defence.

2. There was contributory negligence on the part of the plaintiff (or, the plaintiff's servant.)

(Signed,)

Delivered.....

Appx. D.
s. V.

(To actions for infringement of a patent.)

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.
5. *(Denial of any other matter of fact affecting the validity of the patent.)*
6. The patent was not assigned to the plaintiff.

Delivered (Signed,)

(Copyright.)

1. The plaintiff is not the author (assignee, &c., as the case may be.)
2. The book was not registered.
3. The defendant did not infringe.

Delivered (Signed,)

(Trade-mark.)

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

Delivered (Signed)

(Light.)

1. The plaintiff's lights are not ancient *(or deny his other alleged prescriptive rights.)*
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

(Nuisance.)

3. The defendant denies that he or his servants pollute the water *(or, do what is complained of.)*

(If the defendant claims the right by prescription, or otherwise, to do what is complained of, he must say so, and must state the grounds of his claim, i. e., whether by prescription, grant, or what.)

4. The plaintiff has been guilty of laches, of which the following are particulars:

1870. Plaintiff's mill began to work.

1871. Plaintiff came into possession.

1883. First complaint.

Appx. D.
ss. VI, VII.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. (*If other grounds are relied on, they must be stated, e. g., the Statute of Limitations as to past damage.*)

Delivered..... (Signed,)

(*To action for seduction.*)

1. The said A. B. was not the servant of the plaintiff.

2. The defendant did not seduce and carnally know the said A. B.

Delivered..... (Signed,)

Section VI.

TO ACTIONS FOR RECOVERY OF LAND. APPENDIX C., SECT. VI.

1. The defendant is in possession of the premises by himself or his tenant.

2. The defendant has no notice to quit.

Delivered..... (Signed,)

Section VII.

COUNTER-CLAIMS.

The defendant lent \$500 to the plaintiff on 1st May, 1882.

The defendant counter-claims \$500.

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of steam coal at \$4.00 per ton F. O. B. at Pictou, by equal monthly deliveries over the first five months of 1882.

2. The April and May instalments were not delivered.

Particulars of the damages :

Difference between market price in April and May, and the contract price, \$0.50 per ton on 2,000 tons.....	\$1000 00
---	-----------

The defendant counter-claims \$1,000.00.

Delivered..... (Signed,)

APPX. E.
SS. I, II.

APPENDIX E.

**FORMS OF REPLY, &C., TO BE USED PURSUANT TO
ORDER XIX, RULE 5.**

Section I.

(General Form.)

18.. *(Here put the letter and number.)*

In the Supreme Court.

Between....., Plaintiff,
and
....., Defendant.

Reply.

The plaintiff, as to the defence, says that—

1.
2.

The plaintiff, as to the counter-claim, says that—

1.
2.

(Signed,)

Delivered.....

Reply.

*(In action on guarantee to which defence raised of time given
to principal, and counter-claim, for non-delivery of goods.)*

The plaintiff, as to the defence, says that—

1. He joins issue.

2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff, as to the counter-claim, says that—

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed,)

Delivered.....

Section II.

EXAMPLE OF A STATEMENT OF CLAIM, DEFENCE, AND REPLY.

18.. *(Here put the letter and number.)*

In the Supreme Court. Between A. B., Plaintiff,
and
C. D., Defendant.

Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars :

Appx. E.
88. II.

1882. January 1st to 31st May. To rebuilding house at Dartmouth, as per contract, dated the 24th December, 1881	\$3000 00
To extras, as per account delivered.....	500 00
	<hr/>
Paid on account.....	\$3500 00
	2000 00
	<hr/>
Balance due	\$1500 00
	<hr/>

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1882, till payment or judgment.

Place of trial.....

(Signed)

Delivered theof.....18..

(Heading as in General Form.)

Defence and counter-claim.

Defence.

The defendant says that :—

1. Except as to \$200, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to \$200, parcel of the money claimed, the defendant brings (*or has brought*) into Court \$200, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

Counter-claim.

The defendant says that :—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1882, or in default pay to the defendant \$4 a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st of May.

The defendant counter-claims \$244.

(Signed,)

Delivered the 22nd of January, 1883.

(Heading as in General Form.)

REPLY.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the \$200 in satisfaction.

Appx. E.
s. III.
Nos. 1, 2.

The plaintiff as to the counter-claim says that—

The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed,)

Delivered the.....of.....1884.

Section III.

DEFENCE INCLUDING AN OBJECTION IN POINT OF LAW. (O.
 25, r. 2.)

No. 1.

(Heading.)

Defence.

(To action on guarantee for price of goods.)

The defendant says that—

1. The goods were not supplied to E. F. on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

Delivered (Signed,)

No. 2.

(Heading.)

Defence.

(To action for verbal slander, actionable only by reason of special damage.)

The defendant says that—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

Delivered (Signed,)

No. 3.

(Heading.)

**Appx. F.
Nos. 1, 2.**

Defence.

(To action on a marine policy, stated to contain clauses that the policy was to be proof of interest, and without benefit of salvage.)

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by
19 Geo. II. c. 37, s. 1.

(Signed)

Delivered.....

APPENDIX F.**FORMS OF JUDGMENT. (O. 39, r. 1.)****No. 1.**

DEFAULT OF APPEARANCE AND DEFENCE IN CASE OF LIQUIDATED
DEMAND. (O. 13, r. 3, O. 27, rr. 2, 3.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

Between A. B., plaintiff,
and
C. D., and E. F., defendants.

30th November, 19..

The defendants (*or the defendant C. D.*) not having appeared to the writ of summons herein (*or not having delivered any defence*), it is this day adjudged that the plaintiff recover against the said defendant \$....., and costs, to be taxed.

No. 2.

INTERLOCUTORY JUDGMENT IN DEFAULT OF APPEARANCE OR DEFENCE WHERE DEMAND UNLIQUIDATED. (O. 13, r. 5.)

(*Heading as in Form 1.*)

The.....day of....., 19..

No appearance having been entered to the writ of summons (*or no defence having been delivered by the defendant herein.*)

It is this day adjudged that the plaintiff recover against the defendant the value of the goods (*or damages or both, as the case may be*) to be assessed.

No. 3.**Appx. F.****Nos. 3-5.**

JUDGMENT IN DEFAULT OF APPEARANCE AND DEFENCE IN ACTION
FOR RECOVERY OF LAND. (O. 27, r. 7, O. 13, r. 8.)

(*Heading as in Form 1.*)

30th November, 19..

No appearance having been entered [*or* no statement of defence having been delivered] herein, it is this day adjudged that the plaintiff recover possession of the land in the writ of summons [*or* statement of claim] herein mentioned and described as.....

No. 4.

JUDGMENT IN DEFAULT OF APPEARANCE AND DEFENCE AFTER
ASSESSMENT OF DAMAGES. (O. 13, r. 5.)

(*Heading as in Form 1.*)

30th November, 19..

The defendants not having appeared to the writ of summons herein (*or* not having delivered any defence), and a writ of inquiry dated....., 19.., having been issued directed to the sheriff of..... to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return dated the.....19.., returned that the said damages have been assessed at \$....., it is adjudged that the plaintiff recover \$....., and costs to be taxed.

No. 4. A.

FINAL JUDGMENT AFTER ASSESSMENT OF DAMAGES BY AN
OFFICIAL REFEREE. O. 34, r. 45.)

(*Heading as in Form 1.*)

The plaintiff having on the day of, 19...., obtained interlocutory judgment herein against the defendant in default of (appearance *or* defence) for damages to be assessed, and having on theday of.....19...., ordered that the said damages be assessed by an official referee of the Supreme Court, and, Esq., official referee, having found and assessed the said damages at \$....., as appears by his certificate dated the..... Therefore it is adjudged that the plaintiff recover against the defendant \$....., and costs to be taxed.

No. 5.

JUDGMENT AFTER APPEARANCE AND ORDER UNDER ORDER
XIV, RULE 1.

(*Heading as in Form 1.*)

The day of

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of, dated the.....day of 19.., obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV, Rule 1, for (*recite order.*)

It is this day adjudged that the plaintiff recover against the defendant \$..... (*or*, possession of the land in the indorsement on the writ described as) and costs to be taxed.

APPX. F.
Nos. 6—8.

The above costs have been taxed and allowed at \$.....

No. 6.

JUDGMENT AT TRIAL BY JUDGE WITHOUT A JURY.

(*Heading as in Form 1.*)

This action coming on for trial (the day of and) this day before in the presence of counsel for the plaintiff and the defendants (*or, if some of the defendants do not appear*, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of, filed the day of appears), upon hearing the probate of the will of, the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated and signed by (Mr., the solicitor for) the plaintiff A. B., and by (Mr., the solicitor for) the defendant C. D., the affidavit of, filed the day of, the affidavit of filed the day of, the evidence of, taken on their oral examination at the trial, and an exhibit marked X., being an indenture dated, &c., and made between (parties), and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

No. 7.

JUDGMENT AFTER TRIAL WITH A JURY.

(*Heading as in Form 1.*)

15th November, 19..

The action having on the 12th and 13th November, 19.., been tried before the Honorable Mr. Justice, with a special jury of the county of, and the jury having found (*state findings*) and the said Mr. Justice having ordered that judgment be entered for the plaintiff for \$.... and costs (*or as the case may be*): Therefore, it is adjudged that the plaintiff recover against the defendant \$...., and \$.... for his costs (*or that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff \$.... for his costs of defence, (or as the case may be.)*)

No. 8.

JUDGMENT AFTER TRIAL BEFORE REFEREE. O. 34, Pt. 5.)

(*Heading as in Form 1.*)

30th November, 19..

The action having on the 27th November, 19.., been tried before X. Y., Esq., an official (*or special*) referee, and the said X. Y. having found (*or having ordered that judgment may be entered*) (*state substance of referee's certificate*), it is this day adjudged that.....

No. 9.

Appx. F.
Nos. 9—11A. JUDGMENT AFTER TRIAL OF QUESTIONS OF ACCOUNT BY REFEREE.
 (Arbitration Act.)

(Heading as in Form 1.)

The.....day of....., 19..

The questions of account in this action having been referred to....., and he having found that there is due from the to the the sum of \$....., and directed that the..... do pay the costs of the reference.

It is this day adjudged that the recover against the..... \$..... and costs to be taxed.

The above costs have been taxed and allowed at \$.....

No. 10.

JUDGMENT UPON MOTION FOR JUDGMENT. (O. 38.)

(Heading as in Form 1.)

30th November, 19..

This day before Mr. X. of counsel for the plaintiff (*or as the case may be*), moved on behalf of the said (*state judgment moved for*), and the said Mr. X. having been heard of counsel for and Mr. Y., of counsel for, the Court adjudge.....

No. 11.

JUDGMENT AFTER TRIAL BY COURT WITHOUT JURY. (O. 34, r. 32.)

(Heading as in Form 1.)

This action having on the day of 19.., been tried before and the said on the day of 19.., having ordered that judgment be entered for the for \$.....

It is this day adjudged that the recover from the \$..... and costs to be taxed.

The above costs have been taxed and allowed at \$.....

Judgment entered the day of, 19..

No. 11. A.

JUDGMENT OF DISMISSAL. (O. 34, r. 23)

(Heading as in Form 1.)

Dated and entered the day of 19..

This action having on the day of 19.., been called on for hearing before, and the plaintiff having failed to appear, and the defendant having thereupon become entitled..... under Order XXXIV, Rule 23, to judgment dismissing the action

and the said having ordered that judgment be entered accordingly.

Appx. F.
Nos. 12-14.

Therefore it is adjudged that this action do stand dismissed out of this Court with costs.

And it is further adjudged that the defendant recover against the plaintiff his costs to be taxed.

The above costs have been taxed, &c.

No. 12.

JUDGMENT IN PURSUANCE OF ORDER. (O. 39, r. 7.)

(Heading as in Form 1.)

Pursuant to the order of.....dated.....19.., whereby it was ordered.....and default having been made.....

It is this day adjudged that the plaintiff recover against the said defendant \$.....and costs to be taxed.

The above costs have been taxed and allowed at \$.....

No. 13.

JUDGMENT FOR DEFENDANT'S COSTS ON DISCONTINUANCE. (O. 26, r. 3.)

(Heading as in Form 1.)

The.....day of....., 19..

The plaintiff having by a notice in writing.....dated the.....day of....., 19.., wholly discontinued this action (*or withdrawn his claim in this action for*) (*or withdrawn so much of his claim in this action as relates to....., or as the case may be.*)

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at \$.....

No. 14.

JUDGMENT FOR PLAINTIFF'S COSTS AFTER CONFESSION OF DEFENCE. (O. 24, r. 3.)

(Heading as in Form 1.)

The.....day of....., 19..

The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the.....day of....., 19.., delivered a confession of that defence:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at \$.....

No. 15.

Appx. F.
Nos. 15—17. JUDGMENT FOR COSTS AFTER ACCEPTANCE OF MONEY PAID INTO COURT. (O. 22, r. 7.)

(Heading as in Form 1.)

The.....day of....., 19..

The defendant having paid into court in this action the sum ofin satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the.....day of....., 19.., accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within.....after the said taxation:

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at \$.....

No. 16.

JUDGMENT WHERE NO JUDGMENT ENTERED AT TRIAL BY JURY.

(Heading as in Form 1.)

The.....day of....., 19..

This action having on the....., 19.., been tried before..... and a.....jury of the.....of.....and the jury having found.....and the.....not having thought fit to order any judgment to be entered.

Now on motion before the Court for judgment on behalf of the....., the Court having.....:

It is this day adjudged that the.....recover against the..... the sum of \$.....and costs to be taxed.

The above costs have been taxed and allowed at \$.....

Judgment entered the.....day of....., 19..

No. 17.

JUDGMENT ON MOTION AFTER TRIAL OF ISSUE. (O. 38, r. 7.)

(Heading as in Form 1.)

The.....day of.....19..

The issues or questions of fact arising in this action (*or* cause, *or* matter) by the order dated the.....day of.....ordered to be tried before....., having on the.....day of.....been tried before.....and the.....having found.....

Now on motion before the Court for judgment on behalf of....., the Court having:

It is this day adjudged that the.....recover against the..... the sum of \$.....and costs to be taxed.

The above costs have been taxed and allowed at \$.....

Judgment entered the day of, 19..

Appx. G.
Part I.
Nos. 1, 2.

No. 18.

SATISFACTION PIECE. (O. 39, r. 11.)

(Heading as in Form 1.)

Satisfaction is acknowledged of the judgment entered between the said plaintiff and the said defendant on the day of, 19.., for and costs.

Dated the day of, 19..

(Signed,)

APPENDIX G.

PART I.

FORMS OF PRÆCIPE. (O. 40, r. 12.)

No. 1.

OF EXECUTION. (O. 41.)

19.. *(Here put the letter and number.)*

In the Supreme Court.

Between A. B., Plaintiff,

and

C. D., and others, Defendants.

Seal a writ of execution directed to the Sheriff of, to levy against C. D. the sum of \$..... and interest thereon at the rate of \$6 per centum per annum from the day of to (and \$..... costs.)

Judgment (or order) dated day of

X. Y., Solicitor for *(party on whose behalf writ is to issue.)*

No. 2.

OF WRIT OF SEQUESTRATION. (O. 41.)

(Heading as in Form 1.)

Seal a writ of sequestration against C. D. for not at the suit of A. B., directed to (name of Commissioners.)

Order dated day of

APPX. G.
Part I.
Nos. 3-8.

No. 3.

OF WRIT OF POSSESSION. (O. 48.)

(Heading as in Form 1.)

Seal a writ of possession directed to the Sheriff of.....to
 deliver possession to A. B., of.....

Judgment dated.....day of.....

No. 4.

OF WRIT OF DELIVERY. (O. 49.)

(Heading as in Form 1.)

Seal a writ of delivery directed to the Sheriff of.....to make
 a delivery to A. B., of.....

No. 5.

OF WRIT OF ATTACHMENT.. (O. 42.)

(Heading as in Form 1.)

Seal in pursuance of order dated day of, an attach-
 ment directed to the Sheriff of against C. D., for not deliver-
 ing to A. B.

* * * * *

No. 7.

OF INQUIRY. (O. 13, r. 5.)

(Heading as in Form 1.)

Seal a writ of inquiry directed to the Sheriff of to assess
 the damages in this action.

Judgment dated.....

Dated the day of, 19..

(Signed)

(Address)

Solicitor for the

No. 8.

OF CERTIORARI.

(Heading as in Form 1.)

Seal in pursuance of order dated, a writ of certiorari
 directed to

Dated the day of, 19..

(Signed)

(Address)

Solicitor for the

No. 9.

OF PROHIBITION.

Appx. G.
Part I.
Nos. 9-12.

19.., (*Here put the letter and number.*)

In the Supreme Court.

In the matter of a certain now depending in the.....
 Court. -

Between , Plaintiff,
 and
 , Defendant.

Seal a writ of prohibition directed to the Judge of the above-named Court and to the above-named plaintiffs to prohibit them from further proceeding in the said

Dated the day of, 19..

(Signed)

(Address)

Solicitor for the

* * * * *

No. 11.

OF HABEAS CORPUS AD TESTIFICANDUM.

(*Heading as in Form 1.*)

Seal in pursuance of order dated a writ of *habeas corpus ad testificandum* directed to the, to bring before.....
 Dated the day of 19..

(Signed)

(Address)

Solicitor for the

No. 12.

OF COMMISSION TO EXAMINE WITNESSES. (O. 35, r. 5.)

(*Heading as in Form 1.*)

Seal in pursuance of order dated a writ in the nature of a mandamus or commission to examine witnesses directed to

Dated the day of 19..

(Signed)

(Address)

Solicitor for the

APPX. G.
Part I.
Nos. 13—16.

No. 13.

OF COMMISSION OF PARTITION.

(Heading as in Form 1.)

Seal in pursuance of order dated.....a commission of
 partition directed to.....returnable.....

Dated the.....day of....., 19..

(Signed,)

(Address)

Solicitor for the.....

No. 14.

OF AMENDED SUMMONS. (O. 28, r. 1.)

(Heading as in Form 1.)

Amend in pursuance of order (or fiat) dated.....the writ of
 summons in this action by *(set out amendments when required.)*

Dated the.....day of....., 19..

(Signed,)

(Address)

Solicitor for the.....

No. 15.

OF RENEWED SUMMONS. (O. 8.)

(Heading as in Form 1.)

Seal in pursuance of order dated....., a renewed writ of
 summons in this action, indorsed as follows:.....

Dated the.....day of....., 19..

(Signed,)

(Address)

Solicitor for the.....

No. 16.

OF SUBPŒNA. (O. 35, r. 25.)

(Heading as in Form 1.)

Seal writ of subpœna.....on behalf of the.....directed
 to.....returnable.....

Dated the.....day of....., 19..

(Signed,)

(Address)

Solicitor for the.....

No. 17.

ENTRY OF ACTION FOR TRIAL. (O. 34, r. 20.)

*(Heading as in Form 1.)***Appx. G.
Part I.
Nos. 17—20.**

Enter this action for trial.....

Dated the.....day of....., 19..

(Signed,)

(Address)

No. 18.

ENTRY OF APPEAL. (O. 57, r. 9.)

*(Heading as in Form 1.)*Enter this appeal from the order (or judgment) of.....in this
action, dated the.....day of....., 19..

Dated the.....day of....., 19..

(Signed,)

(Address)

No. 19.

ENTRY FOR ARGUMENT GENERALLY.

(Heading as in Form 1.)

Set down for argument the

Dated the day of 19..,

(Signed,)

(Address)

No. 20.

ENTRY OF SPECIAL CASE. (O. 33, r. 3.)

*(Heading as in Form 1.)*Set down the dated the day of 19.., of
Mr., the referee in this for hearing
as a special case.

Dated the day of 19..

(Signed)

(Address)

No. 21.**Appx. H.****No. 1.**

MEMORANDUM OF SERVICE OF NOTICE OF JUDGMENT. (O. 16, r. 43.)

(Heading as in Form 1.)

Enter memorandum of service of notice of judgment made in this action, and dated the day of, 19.., on the under-mentioned persons, viz:—

Name of Party Served.	Date of Service.

Dated the day of, 19..

(Signed)

(Address)

No. 22

MEMORANDUM OF NOTICE OF JUDGMENT. O. 16, rr. 8, 9, 44.

Take notice that from the time of the service of this notice you (*or as the case may be*, the infant or person of unsound mind) will be bound by the proceedings in the above cause in the same manner as if you (*or the said infant or person of unsound mind*) had been originally made a party, and that you (*or the said infant or person of unsound mind*) may, on entering an appearance at the Prothonotary's office at, attend the proceedings under the within mentioned judgment (*or order*) and that you (*or the said infant or person of unsound mind*) may within one month after the service of this notice apply to the Court to add to the judgment (*or order*.)

APPENDIX H.

FORMS OF WRITS, ETC. (O. 40, r. 14, and O. 41, r. 1.)

No. 1.

WRIT ON DELIVERY.

19.., (*Here put the letter and number.*)

Between A. B., Plaintiff,
and
C. D., Defendant.

VICTORIA, by the Grace of God, &c. To the Sheriff of greeting: We command you, that without delay you cause the following chattels, that is to say (*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*), to be returned to A. B., which the said A.

B. lately in our Supreme Court recovered against C. D. (*or* C. D. was ordered to deliver to the said A. B.) in an action in the said Court.* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said C. D. by all his lands and chattels in your bailiwick, so that neither the said C. D. nor any one for him do lay hands on the same until the said C. D. render to the said A. B. the said chattels.†

And in what manner you shall have executed this, our writ, make appear to us in our Court aforesaid, immediately after the execution hereof.

And have you there then this writ.

Issued, &c.

No. 2.

The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it.

(*Proceed as in the preceding form until the*, and then thus :*) And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said C. D. in your bailiwick you cause to be made \$. (*the assessed value of the chattels*).† And in what manner, &c.

And have you there then this writ.

Issued, &c.

(If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the† and continue thus :)

And we further command you that of the goods and chattels of the said C. D., in your bailiwick, you cause to be made the sum of \$. (*damages*.) And also interest thereon at the rate of \$6 per centum per annum, from the day of, which said sum of money and interest were in the said action by the judgment therein (*or* by order) dated the day of, adjudged (*or* ordered) to be paid by the said C. D. to A. B., together with certain costs in the said judgment (*or* order) mentioned, and which costs have been taxed and allowed at the sum of \$. And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the sum of \$. (*costs*), together with interest thereon at the rate of \$6 per centum per annum from the day of, and that you have that money and interest before us in our Court immediately after the execution hereof, to be paid to the said A. B., in pursuance of the said judgment (*or* order.)

And in what manner, &c.

And have you there then this writ.

Issued, &c.

Appx. H.
Nos. 3-6.

No. 3.

WRIT OF ATTACHMENT. (PERSON.) (O. 42.)

(Heading as in Form 1.)

VICTORIA, by the Grace of God, &c. To the Sheriff of
greeting.

We command you to attach C. D., so as to have him before us in the Supreme Court wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he, it is alleged, hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Issued, &c.

No. 4.

WRIT OF SEQUESTRATION. [O. 41.]

(Heading as in Form 1.)

VICTORIA, by the Grace of God, &c. To *(names of not less than four Commissioners)* greeting.

Whereas, lately in the Supreme Court in a certain action there depending, wherein A: B. is plaintiff and C. D. and others are defendants *(or in a certain matter then depending, intituled "In the matter of E. F.," as the case may be)* by a judgment *(or order, as the case may be)* of our said Court made in the said action *(or matter)*, and bearing date the day of, 19.., it was ordered that the said C. D. should (pay into Court to the credit of the said action the sum of \$....., *or as the case may be.*) Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said C. D., and to collect, receive, and sequester into your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estate whatsoever; and, therefore, we command you, or any three or two of you, that you do at certain, proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said C. D. and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said C. D. shall (pay into Court to the credit of the said action the sum of \$....., *or as the case may be.*), clear his contempt, and our said Court make other order to the contrary.

Issued, &c.

* * * * *

No. 6.

WARRANT TO ARREST WITNESS. (O. 34, r. 48.)

(Heading as in Form 1.)

To the Sheriff of :

Whereas, it has been made to appear to me that E. F. is a necessary and material witness on behalf of the....., and has

been duly served with a subpoena, and paid or tendered his fees for travelling and attendance as a witness, and refuses or neglects to attend to give evidence. These are, therefore, to command you forthwith to apprehend the said E. F., and to bring him before for the purpose of giving evidence in such cause, and to be further dealt with according to law.

Given under my hand and seal this.....day of.....19..

(Signed,)

No. 7.

WRIT OF EXECUTION (AS HERETOFORE KNOWN.) (O. 41.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the Sheriff of the County of....., or to any other of our Sheriffs, greeting.

Whereas,.....by the consideration of our Supreme Court at.....on the.....day of.....A. D. 19.., recovered judgment against....., of....., in the County of....., for the sum of.....dollars and.....cents debt or damage, and the sum of.....dollars and.....cents costs of suit. We command you, therefore,.....that of the goods, chattels, lands or tenements of the said.....within your precinct, you cause to be paid and satisfied unto the said.....at the value thereof in money, the aforesaid sums, being.....dollars and.....cents, and thereof also to satisfy yourself for your own fees. Whereof fail not, and make due return of this writ unto our said.....Court at.....

Issued this.....day of....., A. D. 19..

Solicitor of.....

(To be indorsed with instructions as heretofore, and as in the Rules provided.)

No. 7, A.

WRIT OF EXECUTION ON ORDER FOR COSTS. (O. 63, r. 18.)

[Heading as in Form 1.]

Victoria, by the Grace of God, &c.

To the Sheriff, &c.

Whereas,.....by an order of.....(or our Supreme Court at.....) on the.....day of....., A. D. 19.., is entitled to be paid by....., of....., in the County of....., the sum of.....dollars and.....cents.

We command you therefore, &c., *(as in preceding form and indorsed with the like indorsement.)*

Appx. II.
Nos. 8—10.

No. 8.

WRIT OF POSSESSION. (O. 48.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the Sheriff of....., greeting:

Whereas lately in our Supreme Court by a judgment, (A. B. recovered) *or* (E. F. was ordered to deliver to A. B.) possession of all that.....with the appurtenances in your bailiwick: Therefore we command you that you enter the same, and without delay you cause the said A. B. to have possession of the said land and premises with the appurtenances, and in what manner, &c.

And have you there then this writ.

Issued, &c.

No. 9.

WRIT OF ATTACHMENT (ABSCONDING DEBTOR.), (O. 46, r. 2.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the Sheriff of....., greeting:

We command you to attach the goods and chattels or the estate of....., an absconding or absent debtor, to the value of....., to respond the judgment which may be obtained by....., who has taken proceedings against the said.....as an absconding or absent debtor, in our Supreme Court at....., and we do command you that immediately after the execution hereof, you do return this writ into our Supreme Court at.....together with your doings thereon, and the day of execution.

Issued this.....day of....., A. D., 19..

.....
 Plaintiff's Solicitor.

No. 10.

SUMMONS FOR AGENT (ABSCONDING DEBTOR.) (O. 46, r. 14.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.,

To the Sheriff, &c.

We command you to summon....., the agent of....., late of....., an absconding or absent debtor, to appear in the Supreme Court at....., within fifteen days after the service of this writ, to declare, discover and disclose what goods, credits or effects, of the said.....were in.....hands, or possession, or under.....management or control at the time of the service of this writ upon....., in a suit prosecuted by.....against the said....., as an absconding or absent debtor, in our said Court at.....

Issued this.....day of....., A. D., 19..

.....
 Solicitor of plaintiff.

APPENDIX J.

Appx. J.
Nos. 1-3.

FORMS OF SUBPŒNA, &c.

No. 1.

SUBPŒNA AD TESTIFICANDUM (GENERAL FORM.) (O. 35, r. 26.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

Between....., plaintiff,
and
....., defendant.

Victoria, by the Grace of God, &c.

To (*the names of three witnesses may be inserted*) greeting:
We command you to attend before.....at.....on.....day the.....day of.....19.., at the hour of.....in the.....noon, and so from day to day, until the above cause is tried, to give evidence on behalf of the plaintiff (*or defendant.*)

Issued, &c.

No. 2.

HABEAS CORPUS AD TESTIFICANDUM. (O. 35, r. 26.)

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To the (keeper of our prison at.....)

We command you that you bring....., who it is said is detained in Our prison under your custody, before.....at.....on.....day the.....day of.....at the hour of.....in the.....noon, and so from day to day, until the above action is tried, to give evidence on behalf of the..... And that immediately after the said.... shall have so given his evidence you safely conduct him to the prison from which he shall have been brought.

Issued, &c.

No. 3.

SUBPŒNA DUCES TECUM (GENERAL FORM.) (O. 35, r. 26.)

(*Heading as in Form 1.*)

Victoria, by the Grace of God, &c.

To (*the names of three witnesses may be inserted*) greeting:
We command you to attend before.....at.....on.....day the.....day of....., 19.., at the hour of.....in the.....noon, and so from day to day until the above cause is tried, to give evidence on behalf of the....., and also to bring with you and produce at the time and place aforesaid (*specify documents to be produced.*)

Issued, &c.

**Appx. J.
Nos. 4—6.****No. 4.**

SUBPŒNA AD TESTIFICANDUM AT SITTINGS. (O. 35, r. 26.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To *(the names of three witnesses may be inserted)* greeting:
We command you to attend at the sittings of Our Supreme Court
for.....to be holden at.....on.....day the.....day of.....,
19.., at the hour of.....in the.....noon, and so from day to day
during the said sittings, until the above cause is tried, to give
evidence on behalf of the.....

Issued, &c.

No. 5.

SUBPŒNA DUCES TECUM AT SITTINGS. (O. 35, r. 26.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To *(the names of three witnesses may be inserted)* greeting:
We command you to attend at the sittings of the Supreme
Court for, to be holden at on day the.....day
of 19... at the hour of o'clock in the noon, and
so from day to day until the above cause is tried, to give evidence
on behalf of the, and also to bring with you and produce at
the time and place aforesaid *(specify documents to be produced.)*

Issued, &c.

No. 6.

WRIT OF INQUIRY FOR ASSESSMENT OF DAMAGES.

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the Sheriff of, greeting:

Whereas, it has been adjudged that the plaintiff recover against
the defendant damages to be assessed;

Therefore, We command you, that by the oaths of twelve good
and lawful men of your bailiwick you inquire what damages the
plaintiff is entitled to recover under the said judgment, and that
forthwith thereafter you send the inquisition which you shall take
thereupon to Our said Court, under your seal, and the seals of those
by whose oath you take the inquisition, together with this writ.

Issued, &c.

No. 7.

CERTIORARI TO COUNTY COURT.

Appx. J.
Nos. 7—9.*(Heading as in Form 1.)*

Victoria, by the Grace of God, &c.

To the Judge of the County Court for District No., greeting:

We, willing for certain causes to be certified of a plaint levied in our Court before you against at the suit of, command you that you send to Us forthwith, in the Supreme Court, the said plaint with all things touching the same, as fully and entirely as the same remain in Our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right We shall see fit to be done.

Issued, &c.

No. 8.

CERTIORARI (GENERAL.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the, greeting:

We, willing for certain causes to be certified of command you that you send to us in our Supreme Court on the day of the aforesaid, with all things touching the same, as fully and entirely as they remain in, together with this writ, that We may further cause to be done thereupon what of right We shall see fit to be done.

Issued, &c.

No. 9.

PROHIBITION.

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To the (Judge of the County Court for District No. .. and to *(name of plaintiff)* of, greeting:

Whereas we have been given to understand that you the said have (entered a plaint against) C. D. in the said Court, and that the said Court has no jurisdiction in the said (cause) or to hear and determine the said (plaint) by reason that *(state facts showing want of jurisdiction.)*

We therefore hereby prohibit you from further proceeding in the said (action) in the said Court.

Issued, &c.

Appx. J.
No. II.

No. II.

COMMISSION TO EXAMINE WITNESSES. (O. 35, r. 5.)

(Heading as in Form 1.)

Victoria, by the Grace of God, &c.

To of and of Commissioners named by and on behalf of the and to of and of Commissioners named by and on behalf of the greeting: Know ye, that We in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *viva voce* as hereinafter mentioned witnesses on behalf of the said and respectively at before you or any two of you, so that one Commissioner only on each side be present and act at the examination, and We command you as follows:

1. Both the said and the said shall be at liberty to examine on interrogatories and *viva voce* on the subject matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf, with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *viva voce*, the party producing any witness for examination being at liberty to re-examine him *viva voce*; and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said Commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the Commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the Commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the Commissioners or Commissioner of that party neglect to attend pursuant to the notice; then one of you, the Commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination, producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified, by the Commissioners or Commissioner present and acting, to be a true and correct copy or extract shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this Commission shall be examined on oath, affirmation, or otherwise in accordance with his religion, by or before the Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the Commissioners

or Commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses, and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Prothonotary of the Supreme Court of Nova Scotia at on or before the day of enclosed in a cover under the seals or seal of the Commissioners or Commissioner.

8. Before you or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon indorsed, on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions and is considered by you respectively to be binding on your respective consciences. In the absence of any other Commissioner, a Commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Issued, &c.

WITNESSES' OATH.

You are true answer to make to all such questions as shall be asked you, without favor or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

COMMISSIONER'S OATH.

You (*or I*) shall, accordingly to the best of your (*or my*) skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the Commission within written. So help you (*or me*) God.

INTERPRETER'S OATH.

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations, which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the Commissioners named in the Commission within written as far forth as you are directed and employed by the said Commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

CLERK'S OATH.

Appx. K.
Nos. 1, 1A.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said Commissioners named in the Commission within written, as far forth as you are directed and employed by the Commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

APPENDIX K.

[SUMMONSES AND ORDERS.]

No. 1.

SUMMONS (GENERAL FORM.) (O. 54, r. 10.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

Between Plaintiff.
and
..... Defendant.

Let all parties concerned attend the Judge in Chambers, on.... day, the day of, 19.., at o'clock in the noon, on the hearing of an application on the part of

Dated the day of 19..

This summons was taken out by, of solicitor for

To

No. 1, A.

GENERAL FORM OF ORIGINATING SUMMONS. (O. 54, r. 4.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

If the question to be determined arises in the administration of an estate or a trust entitle it also in the matter of the estate or trust.

Between A. B., Plaintiff,
and
C. D., Defendant.

Let..... of in the County of within eight days, after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of of in the county of who claims to be (*state the nature of the claim*).... for the determination of the following questions: (*State the questions.*)

Dated the

This summons was taken out by, solicitor for the above-named.....

APPX. K.
Nos. 1B, 1C.

The defendant may appear hereto by entering appearance either personally or by solicitor at the Prothonotary's office at Halifax.

Note.—If the defendant does not enter appearance within the time and at the place above-mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

No. 1, B.

ORIGINATING SUMMONS NOT INTER PARTES. (O, 54, r. 4.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

In the matter of the Trusts of the Will of A. B. And in the matter of the Trustee Act, (*or as the case may be.*)

Let of in the county of within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons, which is issued upon the application of of in the county of for an order that (*state the object of the application.*)

Dated the

To

This summons was taken out by of, solicitor for the above-named.....

The respondent may appear hereto by entering appearance either personally or by solicitor at the Prothonotary's office at Halifax.

Note.—If the respondent does not enter appearance within the time and at the place above mentioned, such order will be made and proceedings taken as the judge may think just and expedient.

No. 1, C.

NOTICE OF APPOINTMENT TO HEAR ORIGINATING SUMMONS.

(O. 54, r. 4 B.)

[*Title, &c., as in Forms No. 1A, 1B.*]

To [*insert the name of the defendant or respondent*]. Take notice that you are required to attend the Judge in Chambers at the Court House, Halifax, on day of 19, at o'clock in the noon, for the hearing of the originating summons issued herein on the day of 19., and that if you do not attend in person or by solicitor at the time and place mentioned, such order will be made and proceedings taken as the Judge may think just and expedient.

(Signed)

Solicitor for the Plaintiff [*or Applicant*].

Appx. K.
Nos. 2, 3.

No. 2.

ORDER (GENERAL FORM.) (O. 54, r. 15.)

(Heading as in Form 1.)

Judge....., in Chambers.

Between....., and.....

Upon hearing.....and upon reading the affidavit of.....
filed the.....day of....., 19., and.....:It is ordered....., and that the costs of this application
be.....

Dated the.....day of.....; 19..

No. 3.

SUMMONS FOR DIRECTIONS PURSUANT TO ORDER XXIX.

(Heading as in Form 1.)

Let all the parties concerned attend the Judge in Chambers at
the Court House, Halifax, on.....day the.....day of.....19., at
.....o'clock in the.....noon, on the hearing of an application
on the part of.....to shew cause why an order for directions
should not be made in this action as follows:—

Pleadings.

Particulars.

Admissions.

Discovery.

Interrogatories.

Inspection of
documents.Inspection of real or
personal property.

Commissions.

Examination of
witnesses.

Place of trial.

Mode of trial.

Any other interlo-
cutory matter or
thing.

Dated the.....day of.....

This summons was taken out by....., solicitor for

To.....

No. 4.

ORDER FOR DIRECTIONS PURSUANT TO ORDER XXIX.

Appx. K.
Nos. 4—6.*(Heading as in Form 1.)*

Upon hearing *the solicitors on both sides*....., and upon reading *the affidavit of*.....*filed herein*.....the following directions are hereby given:—

Pleadings.	<i>None.</i>
Particulars.	<i>Defendant in a week to give particulars of payment by him to the deceased.</i>
Admissions.	<i>That the plaintiff is executor, and that the goods were supplied by deceased to the defendant.</i>
Discovery.	<i>Defendant in a week to produce letter of 1st January, 1889.</i>
Interrogatories.	<i>Plaintiff may interrogate as to payment only: interrogatories to be initialed by me.</i>
Inspection of documents.	<i>Plaintiff undertakes to produce pass-book of deceased at trial.</i>
Inspection of real or personal property.	<i>None.</i>
Commissions.	<i>None.</i>
Examination of witnesses.	<i>John Smith to be examined at Yarmouth within a fortnight before examiner of the Court or special examiner to be named by parties, or in default by me.</i>
Place of trial.	<i>Halifax.</i>
Mode of trial.	<i>Judge.</i>
Any other interlocutory matter or thing.	<i>Notice of trial to be given at once by plaintiff.</i>

No. 5.

ORDER FOR TIME. (O. 60.)

(Heading as in Form 1.)

Upon hearing....., and upon reading the affidavit of....., filed the.....day of....., 19.., and.....

It is ordered that the.....shall have.....time,and that the costs of this application be.....

Dated the day of, 19..

No. 6.

ORDER UNDER ORDER XIV. (No. 1.)

(Heading as in Form 1.)

Upon hearing....., and upon reading the affidavit of....., filed the.....day of....., 19.., and.....

It is ordered that the plaintiff may sign final judgment in this action for the amount indorsed on the writ with interest, if any, (or possession of the land in the indorsement of the writ described as.....) and costs to be taxed.

Dated the day of, 19..

Appx. K.**Nos. 7—9A.****No. 7.****ORDER UNDER ORDER XIV. (No 2.)***(Heading as in Form 1.)*

Upon hearing and upon reading the affidavit of
 filed day 19.., and

It is ordered that the defendant be at liberty to defend this
 action, and that the costs of this application be

Dated the day of 19..

No. 8.**ORDER UNDER ORDER XIV (No. 3.)***(Heading as in Form 1.)*

Upon hearing and upon reading the affidavit of
 filed the day of 19.., and

It is ordered that if the defendant pay into court within a week
 from the date of this order the sum of \$.., he be at liberty to de-
 fend this action, but that if that sum be not so paid the plaintiff be
 at liberty to sign final judgment for the amount indorsed on the
 writ of summons, with interest, if any, and costs, and that in
 either event the costs of this application be

Dated the day of 19..

No. 9.**ORDER UNDER ORDER XIV. (No. 4.)***(Heading as in Form 1.)*

Upon hearing and upon reading the affidavit of
 filed the day of 19.., and

It is ordered that if the defendant pay into Court within a week
 from the date of this order the sum of \$, he be at liberty to
 defend this action as to the whole of the plaintiff's claim.

And it is ordered that if that sum be not so paid the plaintiff be
 at liberty to sign judgment for that sum, and the defendant be at
 liberty to defend this action as to the residue of the plaintiff's
 claim, and that the costs of this application be

Dated the day of 19..

No. 9, A.**ORDER UNDER ORDER XIV (No. 5.)***(Heading as in Form 1.)*

Upon hearing and upon reading the affidavit of
 filed the day of 19.. and

It is ordered that if the defendant do not pay to the plaintiff's solicitor within a week from the date of this order, the sum of \$....., the plaintiff be at liberty to sign judgment for the same.

Appx. K.
Nos. 10—12.

And it is further ordered that the said defendant be at liberty to defend this action as to the residue of the plaintiff's claim, and that the costs of this application be costs in the action.

Dated the day of 19..

No. 10.

ORDER TO AMEND. (O. 28, r. 1.)

(Heading as in Form 1.)

Upon hearing and upon reading the affidavit of filed the day of 19.., and

It is ordered that the plaintiff be at liberty to amend the writ of summons in this action by and that the costs of this application be

Dated the day of 19..

No. 11.

ORDER FOR PARTICULARS (PARTNERSHIP.) (O. 19, r. 7.)

(Heading as in Form 1.)

Upon hearing and upon reading the affidavit of filed the day of 19.., and

It is ordered that the furnish the with a statement in writing, verified by affidavit, setting forth the names of the persons constituting the members or co-partners of their firm, pursuant to the Rules of the Supreme Court, Order XLVII, A. r. 1, and that the costs of this application be

Dated the day of 19..

No. 12.

ORDER FOR PARTICULARS (GENERAL.) (O. 19, r. 7.)

(Heading as in Form 1.)

Upon hearing, and upon reading the affidavit of filed the day of 19.., and

It is ordered that the plaintiff deliver to the defendant an account in writing of the particulars of the plaintiff's claim in this action,, and that unless such particulars be delivered within days from the date of this order all further proceedings be stayed until the delivery thereof, and that the costs of this application be

Dated the day of, 19..

No. 12, A.**Appx. K.****Nos. 12A—15.****ORDER FOR PARTICULARS OF COUNTERCLAIM.** (O. 19, r. 7.)*(Heading as in Form 1.)*

Upon hearing, and upon reading the affidavit of
 filed the day of, 19.., and

It is ordered that the defendant do within days
 deliver to the plaintiff's solicitor or agent particulars of the said
 defendant's set-off (counterclaim), that in default the said
 defendant be precluded from giving evidence in support thereof on
 the trial of this action, and that the costs of this application be....

Dated the day of, 19..

No. 13.**ORDER FOR PARTICULARS (ACCIDENT CASE.)** (O. 19, r. 7.)*(Heading as in Form 1.)*

Upon hearing, and upon reading the affidavit of
 filed the day of, 19.., and

It is ordered that the plaintiff deliver to the defendant an
 account in writing of the particulars of the injuries mentioned in
 the statement of claim, together with the time and place of the
 accident, and the particular acts of negligence complained of, and
 that unless such particulars be delivered within days from
 the date of this order all further proceedings in this action be stayed
 until the delivery thereof, and that the costs of this application
 be.....

Dated the day of, 19..

No. 14.**ORDER TO DISCHARGE OR VARY ON APPLICATION BY THIRD
PARTY** (O. 16, Pt. 6.)*(Heading as in Form 1.)*

Upon hearing, and upon reading the affidavit of
 filed the day of 19.., and

It is ordered that the order of in this action dated the
 day of, 19.., be discharged (*or varied by*), and that
 the costs of this application be.....

Dated the day of, 19.....

No. 15.**ORDER TO DISMISS FOR WANT OF PROSECUTION.** (O. 27, r. 1.)*(Heading as in Form 1.)*

Upon hearing, and upon reading the affidavit of
 filed the day of, 19.., and

It is ordered that this action be for want of prosecution, dis-
 missed with costs to be taxed and paid to the defendant by the
 plaintiff, and that the costs of this application be.....

Dated the day of, 19..

No. 16.

ORDER FOR DELIVERY OF INTERROGATORIES. (O. 30, r. 1.)

Appx. K.
Nos. 16-19.*(Heading as in Form 1.)*

Upon hearing, and upon reading the affidavit of,
filed the day of, 19.., and

It is ordered that the be at liberty to deliver to the
interrogatories in writing, and that the said do answer the
interrogatories as prescribed by Order XXX, Rules 8 and 25 of the
Rules of the Supreme Court, and that the costs of this application
be

Dated the day of, 19..

No. 17.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. 30, r. 12.)

(Heading as in Form 1.)

Upon hearing

It is ordered that the do within days from the
date of this order answer on affidavit stating what documents are or
have been in possession or power relating to the matters in
question in this action, and that the costs of this application be....

Dated the day of 19..

No. 18.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION. (O. 30, r. 14.)

(Heading as in Form 1.)

Upon hearing, and upon reading the affidavit of
....., filed the day of, 19.., and

It is ordered that the do, at all seasonable times, on
reasonable notice, produce at *(insert place of inspection)*, situate at
....., the following documents, namely, and that the
..... be at liberty to inspect and peruse the documents so pro-
duced, and to take copies and abstracts thereof and extracts there-
from, at expense, and that in the meantime all further
proceedings be stayed, and that the costs of this application be....

Dated the day of, 19..

No. 19.

ORDER FOR PRODUCTION (UNDERWRITERS.)

(Heading as in Form 1.)

Upon hearing, and upon reading the affidavit of
filed the day of, 19.., and

It is ordered that the do produce and show to the
upon oath all insurance slips, policies, letters of instruction, or

Appx. K.
No 20.

other orders for effecting such slips, or policies, or relating to the insurance or the subject-matter of the insurance on the ship..... or the cargo on board thereof, or the freight thereby, and also all documents relating to the sailing or alleged loss of the said shipthe cargo on board thereof and the freight thereby, and all letters and correspondence with any person or persons in any manner relating to the effecting the insurance of the said ship, the cargo on board thereof, or the freight thereby, or any other insurance whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby, on the voyage insured by, or relating to, the policy sued upon in this action, or any other policy whatsoever effected on the said ship, or the cargo on board thereof, or the freight thereby, on the same voyage. Also all correspondence between the captain or agent of the vessel and any other person, with the owner or any person or persons previous to the commencement of or during the voyage upon which the alleged loss happened. Also all protests, surveys, log books, charter-parties, tradesmen's bills for repairs, average statements, letters, invoices, bills of parcels, bills of lading, manifests, accounts, accounts-current, accounts-sales, bills of exchange, receipts, vouchers, books, documents, correspondence, papers and writings, (whether originals, duplicates, or copies respectively), which now are in the custody, possession, or power, of the....., his brokers, solicitors, or agents, in any way relating or referring to the matters in question in this action, with liberty for the..... to inspect and take copies of or extracts from the same or any of them, and that in the meantime all further proceedings be stayed, and that the costs of this application be.....

Dated the.....day of....., 19..

No. 20.

ORDER FOR SERVICE OUT OF JURISDICTION.

In the Supreme Court.

The Hon. Mr. Justice....., Judge in Chambers.

In the matter of the Judicature Act and the Rules of the Supreme Court, and in the matter of an intended action.

Between....., Plaintiff
and
....., Defendant.

Upon reading the affidavit of.....filed herein.....,

It is ordered that the intended plaintiff be at liberty to issue a writ of summons against the intended defendant.

And it is further ordered that the said intended plaintiff be at liberty to serve.....[If a foreigner in a foreign country insert "Notice of" the said writ at..... Here insert country or place within the limits of which the service is to be made], or elsewhere in the....., and that the time for appearance to the said writ by the said intended defendant.....be within.....after the service of the said.....

[Here insert "Writ" or "Notice of" as may be required.]

Dated the day of , 19..

No. 21.

ORDER FOR SUBSTITUTED SERVICE. (O. 10.)

Appx. K,
Nos. 21—24.*(Heading as in Form 1.)*

Upon hearing.....and upon reading the affidavit of.....,
filed the.....day of.....19., and.....:

It is ordered that service of a copy of this order, and of a copy
of the writ of summons in this action, by sending the same by a
prepaid post letter, addressed to the defendant.....at.....,
shall be good and sufficient service of the writ.

Dated the day of19..

No. 22.

ORDER FOR RENEWAL OF WRIT. (O. 8, r. 1.)

(Heading as in Form 1.)

Upon hearing.....and upon reading the affidavit of.....,
filed the.....day of....., 19., and.....:

It is ordered that the writ in this action be renewed for six
months from the date of its renewal, pursuant to the Rules of the
Supreme Court, Order VIII, Rule 1.

Dated the.....day of....., 19..

No. 23.ORDER FOR ISSUE OF NOTICE CLAIMING CONTRIBUTION. (O. 16,
r. 49.)*(Heading as in Form 1.)*

Upon hearing.....and upon reading the affidavit of.....,
filed the.....day of....., 19., and.....:

It is ordered that the defendant.... be at liberty to
issue a notice claiming over against...., pursuant to the
Rules of the Supreme Court, Order XVI, Rule 49.

Dated the.....day of....., 19..

No. 24.

ORDER OF REFERENCE. (ARBITRATION ACT.)

(Heading as in Form 1.)

Upon hearing....., and by consent.....

It is ordered as follows:

1. (*State matters to be referred*) shall be referred to the award
of.....

2. The arbitrator shall have all the powers as to certifying and
amending of a Judge of the Supreme Court.

APPX. K.
No 27.

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before making of the award) on or before the..... next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing, signed by him and indorsed on this order.

4. The said parties shall, in all things, abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be.....

6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation..

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevents the said arbitrator from making an award, he or they shall pay such costs to the other as.....may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the.....to set it aside, the said.....shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or if they cannot agree, the Judge may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the Court or a Judge, the party or parties in whose favour the award is made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the.....day of....., 19..

* * * * *

No. 27.

ORDER TO REMOVE JUDGMENT FROM COUNTY COURT.

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

In the matter of a plaint in the County Court of....., holden at.... wherein plaintiff,
and
....., defendant.

Upon reading the affidavit of....., filed the.....day of, 19.., and....., certified copy of the judgment in the
 plaintiff above mentioned.

Appx. K.
Nos. 28, 28A.

It is ordered that a writ of certiorari issue to remove the said judgment from the above-named County Court into the Supreme Court.

Dated the.....day of....., 19..

No. 28.

ORDER FOR ARREST. (O. 44, r. 2.)

On hearing.....and on reading the affidavit of....., sworn the day of....., 19.., and.....

It is ordered that the defendant be arrested and imprisoned until final judgment in the action, and if such final judgment is against him, for a period of thirty days thereafter, unless he sooner deposits in Court the sum of \$..... or gives to the Sheriff or other officer arresting him a bond executed by him, and..... sufficient sureties in the penalty of \$..... or some other security satisfactory to the plaintiff, that he will not without leave of the Court or a Judge go out of the Province until final judgment in the action, and if such final judgment is against him until the expiration of thirty days thereafter.

And it is further ordered that the Sheriff of.....do, within one calendar month from the date hereof, including the day of such date and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the.....day of.....19..

To be indorsed, as a writ of summons, with name of solicitor procuring the same, or of plaintiff, if plaintiff is suing in person and without a solicitor.

No. 28, A.

BOND ON DEFENDANT'S ARREST. (O. 44, r. 5.)

Know all men by these presents that we, C. D. (the defendant) of....., E. F. of....., and G. H. of....., are held and firmly bound to J. K. of....., High Sheriff of the County of....., (or coroner of the County of.....), in the sum of \$.....of lawful money of Canada, to be paid to the said J. K., or his certain attorney, executors, administrators, or assigns, for which payment well and truly to be made, we bind ourselves, and each of us for himself, our and every of our heirs, executors and administrators firmly by these presents, sealed with our seals and dated the.....day of....., A. D. 19..

Appx. K.
Nos. 29, 30.

Whereas, the above bounden, C. D., was on the.....day oftaken by the said J. K., as sheriff (*or* coroner) as aforesaid, by virtue of an order for the arrest of the said C. D., bearing date the.....day of.....to the said sheriff (*or* coroner) delivered, in an action at the suit of A. B. And whereas, by the said order, it is ordered that the said C. D. be arrested and imprisoned until final judgment in the action, and if such final judgment is against him until the expiration of thirty days thereafter, unless he sooner deposits in Court the sum of \$..... or gives to the said J. K., a bond executed by him and.....sufficient sureties in the penalty of \$....., or some other security satisfactory to the plaintiff that he will not, without leave of the Court or a Judge, go out of the Province until final judgment in the action, and if such final judgment is against him, until the expiration of thirty days thereafter: Now the condition of this obligation is such that if the said..... does not, without leave of the Court or a Judge, go out of the Province until final judgment in the action, and, if such final judgment is against him, until the expiration of thirty days thereafter, contrary to the said order, then this obligation shall be void, otherwise to stand and remain in full force and effect.

Signed, sealed and delivered, }
in the presence of..... }

C. D. (L. S.)
E. F. (L. S.)
G. H. (L. S.)

No. 29.**ORDER OF REFERENCE FOR INQUIRY AND REPORT UNDER ARBITRATION ACT.***(Heading as in Form 1.)*

Upon hearing.....and upon reading the affidavit of..... filed the.....day of.....19., and....

It is ordered that the following question arising in this action, namely,....., be referred for inquiry and report to....., under section.....of the Arbitration Act, and that the costs of this application be.....

Dated the.....day of....., 19.

No. 30.**ORDER OF REFERENCE FOR TRIAL UNDER ARBITRATION ACT.***(Heading as in Form 1.)*

Upon hearing the solicitors on both sides....., and upon reading the affidavit of....., filed herein.....

It is ordered that the whole of this cause be tried before an official referee who shall have all the powers of certifying and amending of a Judge of the Supreme Court, and shall direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXIV.

Dated the.....day of....., 19..

No. 31.

ORDER OF REFERENCE TO MASTER.

Appx. K.
Nos. 31—33.*(Heading as in Form 1.)*

Upon hearing.....and upon reading the affidavit of.....
 • filed the.....day of....., 19.., and.....:

It is ordered that this action [*or* the matters of account in this action, *or* the following questions in this action being matters of account, namely, (*stating them*)], be referred to the certificate ofwith all the powers as to certifying and amending of a Judge of the Supreme Court, and that the costs of the.....and of the reference be in the discretion of the said....., and that the costs of this application be.....

Dated the.....day of....., 19..

No. 32.

ORDER FOR EXAMINATION OF WITNESSES BEFORE TRIAL. (O. 35, r. 4.)

(Heading as in Form 1.)

Upon hearing.....and upon reading the affidavit of.....,
 filed the.....day of....., 19.., and.....

It is ordered that....., a witness on behalf of the be examined *viva voce* (on oath or affirmation) before....., Esquire, special examiner, the.....solicitor or agent giving to thesolicitor or agent.....notice in writing of the time and place where the examination is to take place.

And it is further ordered that the examination so taken be filed in the Prothonotary's office of the Supreme Court at....., and that an authenticated copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the.....as to his belief, and that the costs of this application be.....

Dated the.....day of....., 19..

No. 33.

SHORT ORDER FOR ISSUE OF COMMISSION TO EXAMINE WITNESSES. (O. 35, r. 5.)

(Heading as in Form 1.)

Upon hearing.....and upon reading the affidavit of.....,
 filed the.....day of....., 19.., and.....:

It is ordered that the.....be at liberty to issue a commission for the examination of witnesses on.....behalf at.....

And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week to be settled by a Judge, (*or as the case may be*), and that the costs of this application be.....

Dated the.....day of....., 19..

No. 34.

Appx. K.
No. 34.

LONG ORDER FOR COMMISSION TO EXAMINE WITNESSES.
(O. 35, r. 5.)

[*Heading as in Form 1.*]

Upon hearing and upon reading the affidavit of,
filed the day of, 19.., and

It is ordered as follows :

1. A commission may issue directed to of and of commissioners named by and on behalf of the and to of and commissioner named by and on behalf of the for the examination upon interrogatories and *viva voce* of witnesses on behalf of the said and respectively at aforesaid before the said commissioners, or any two of them, so that one commissioner only on each side be present and act at the examination.

2. Both the said and shall be at liberty to examine upon interrogatories and *viva voce* upon the subject-matter thereof or arising out of the answers thereto such witnesses as may be produced on their behalf, with liberty to the other party to cross-examine the said witnesses upon cross-interrogatories and *viva voce*, the party producing the witness for examination being at liberty to re-examine him *viva voce* : and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto, returned with the said commission.

3. Within days from the date of this order the solicitors or agents of the said and shall exchange the interrogatories they propose to administer to their respective witnesses and shall also within days from the exchange of such interrogatories, exchange copies of the cross-interrogatories intended to be administered to the said witnesses.

4. days previously to the sending out of the said commission, the solicitor of the said shall give to the solicitor of the said notice in writing of the mail or other conveyance by which the commission is to be sent out.

5. days previously to the examination of any witness on behalf of the said or respectively, notice in writing signed by any one of the commissioners of the party on whose behalf the witness is to be examined and stating the time and place of the intended examination, and the names of the witnesses intended to be examined, shall be given to the commissioners of the other party by delivering the notice to them personally, or by leaving it at their usual place of abode or business, and if the commissioners of that party neglect to attend pursuant to the notice, then one of the commissioners of the party on whose behalf the notice is given shall be at liberty to proceed with and take the examination of the witness or witnesses, *ex parte*, and adjourn any meeting or meetings, or continue the same, from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

6. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause, to be stated in his deposition, to part with the original thereof, then a copy

thereof, or extract therefrom, certified by the commissioners or commissioner present to be a true and correct copy or extracts, shall be annexed to the witnesses' deposition.

**APPX. K.
No. 34A.**

7. Each witness to be examined under the commission shall be examined on oath, affirmation, or otherwise, in accordance with his religion, by or before the said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters, to be nominated by the commissioners or commissioner, and to be previously sworn according to his or their several religions by or before the said commissioners or commissioner truly to interpret the questions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof, or extracts therefrom, shall be sent to the Prothonotary at on or before the day of, or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and certified copies thereof may be given in evidence on the trial of this action by and on behalf of the said and respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said or respectively, as to his belief of the

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

Dated the day of, 19..

No. 34, A.

ORDER FOR ISSUE OF REQUEST FOR COMMISSION. (O. 35, r. 5, A.)

It is ordered that a letter of request do issue directed to the proper tribunal for the examination of the following witnesses, that is to say :

E. F., of

G. H., of

and I. J., of

And it is ordered that the depositions taken pursuant thereto when received be filed at the Prothonotary's office at, and be given in evidence on the trial of this action, saving all just exceptions.

And it is further ordered that the trial of this action be stayed until the said depositions have been filed.

No. 34, B.

Appx. K.
Nos. 34B, 34C.

REQUEST FOR COMMISSION. (O. 35, r. 5, A.)

[*Heading:—To the President and Judges of, &c., &c., or as the case may be.*]

Whereas an action is now pending in the Supreme Court in Nova Scotia, in which A. B. is plaintiff and C. D. is defendant. And in the said action the plaintiff claims.....

(*indorsement upon writ.*)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of.....

G. H., of.....

and I. J., of.....

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court.

Now I.....as the Chief Justice of the said Supreme Court have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the Supreme Court, you as the President and Judges of the said.....or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *viva voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request you that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses, through Her Majesty's Secretary of State for the Dominion of Canada at Ottawa, for transmission to the said Supreme Court in Nova Scotia.

No. 34, C.**ORDER FOR APPOINTMENT OF SPECIAL EXAMINER TO TAKE EVIDENCE ABROAD. (O. 35, r. 4.)**

(*Heading as in Form 1.*)

Upon hearing the solicitors on both sides, and upon reading the affidavit of.....

It is ordered that.....be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, *viva voce*, on oath or affirmation, of.....witnesses

Appx. K.
Nos. 35, 36.

on the part of the.....at.....aforesaid. The.....solicitors to give to the.....solicitors.....days' notice in writing of the date on which they propose to send out this order to.....for execution, and that.....days after the service of such notice the solicitors for the plaintiffs and defendants respectively do exchange the names of their agents at....., to whom notice relating to the examination of the said witnesses may be sent. And that.....days (exclusive of Sunday) prior to the examination of any witness hereunder notice of such examination shall be given by the agent of the party on whose behalf such witness is to be examined to the agent of the other party (unless such notice be dispensed with.) And that the deposition when so taken, together with any documents referred to therein, or certified copies of such documents, or of extracts therefrom, be transmitted by the examiner, under seal, to the Prothonotary of the Supreme Court of Nova Scotia at.....on or before the.....day of.....next, or such further or other day as may be ordered, there to be filed in the proper office. And that either party be at liberty to read and give such depositions in evidence on the trial of this action, saving all just exceptions. And that the trial of this action be stayed until the filing of such depositions. And that the costs of and incident to this application and such examination be costs in the action.

Dated the.....day of....., 19..

No. 35.

ORDER FOR EXAMINATION OF JUDGMENT DEBTOR. (O. 40, r. 44.)

19.. [*Here put the letter and number.*]

In the Supreme Court.....

Between....., Judgment Creditor,
and
....., Judgment Debtor.

Upon hearing.....and upon reading the affidavit of.....
filed the.....day of....., 19.., and.....

It is ordered that the above-named judgment debtor attend and be orally examined as to whether any and what debts are owing to him, and whether the debtor has any and what other property or means of satisfying the judgment, before....., at such time and place as he may appoint, and that the said judgment debtor produce any books or documents in his possession or power relating to the same before the said.....at the time of the examination.

Dated the.....day of....., 19..

No. 36.

GARNISHEE ORDER (ATTACHING DEBT.) (O. 43, r. 1.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between....., Judgment Creditor,
and
....., Judgment Debtor,
.....
Garnishee.

Upon hearing.....and upon reading the affidavit of.....
filed the.....day of....., 19.., and.....

Appx. K.
Nos. 37, 37A.

It is ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court, on the.....day of.....19.., for the sum of \$...., on which judgment the said sum of \$.... remains due and unpaid.

And it is further ordered that the said garnishee attend the Judge in Chambers at.....on.....day the.....day of....., 19.., at....o'clock in the...noon, on an application by the said judgment creditor, that the said garnishee pay the debt due from him to the said judgment debtor, or so much thereof as may be sufficient to satisfy the judgment.

Dated the day of, 19.....

No. 37.

GARNISHEE ORDER (ABSOLUTE.) (O. 43, r. 3.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between....., Judgment Creditor,
and
....., Judgment Debtor,
....., Garnishee.

Upon hearing the solicitors for the judgment creditor and the garnishee....., and upon reading the affidavit of, filed theday of, 19.., and the order *nisi* made herein dated the.....day of....., 19.., whereby it was ordered that all debts owing or accruing due from the above-named garnishee to the above-named judgment debtor should be attached to answer a judgment recovered against the said judgment debtor by the above-named judgment creditor in the Supreme Court on the.....day of, 19.., for the sum of \$....., on which judgment the said sum of \$.... remained due and unpaid.

It is ordered that the said garnishee do forthwith pay the said judgment creditor the debt due from him to the said judgment debtor (or so much thereof as may be sufficient to satisfy the judgment debt), and that in default thereof execution may issue for the same.

Dated the day of 19..

No. 37, A.

ORDER FOR ISSUE BETWEEN JUDGMENT CREDITOR AND
GARNISHEE. (O. 43, r. 4.)

(*Heading as in No. 36.*)

Upon hearing the solicitors for the judgment creditor and the garnishee, and reading the affidavit of....., and the order *nisi* herein, dated the day of 19..

It is ordered that the judgment creditor and the garnishee proceed to the trial of an issue wherein the said judgment creditor shall be plaintiff and the said garnishee shall be defendant, and that the question to be tried shall be whether the said garnishee was indebted to the judgment debtor in any and what amount at the time the said order *nisi* was served. And it is further ordered that the issue be prepared and delivered by the plaintiff therein within ten days from this date, and be returned by the defendant therein within seven days, and be tried at, and that the question of costs and all further questions be reserved until the trial of the said issue.

Appx. K.
Nos. 38, 39.

Dated the day of, 19..

No. 38.

ORDER ON CLIENT'S APPLICATION TO TAX SOLICITOR'S BILL OF COSTS.

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

In the matter of the taxation of costs, and in the matter of one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges and disbursements delivered to the applicant by the above-named solicitor be taxed, and that the said solicitor give credit for all sums of money by him received of or on account of the applicant, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the taxation.

And it is further ordered that upon payment by the applicant of what (if anything) may appear to be due to the said solicitor the said solicitor do, (if required) deliver up to the applicant, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody or power belonging to the applicant.

And it is ordered that the costs of this application be

Dated the day of, 19..

No. 39.

ORDER ON SOLICITOR'S APPLICATION TO TAX BILL OF COSTS.

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

In the matter of the taxation of costs, and in the matter of, one of the Solicitors of the Supreme Court.

Upon hearing, and upon reading the affidavit of filed the day of, 19.., and:

It is ordered that the above-named solicitor's bill of fees, charges and disbursements, delivered to (hereinafter called the said client) be taxed, and that the said solicitor give credit for

**Appx. K.
Nos. 40, 41.**

all sums of money by him received from or on account of the said client, and that he refund what, if anything, he may on such taxation appear to have been overpaid.

And it is further ordered that the said solicitor do not commence or prosecute any cause or matter touching the demand pending the taxation.

And it is further ordered that upon payment by the said client of what (if anything) may appear to be due to the said solicitor, the said solicitor do (if required), deliver to the said client, or as he may direct, all deeds, books, papers, and writings in the said solicitor's possession, custody or power, belonging to the said client.

And it is ordered that the costs of this application be.....

Dated the day of, 19..

No. 40.**ORDER TO TAX AFTER ACTION BROUGHT.**

(Heading as in Form 1.)

Upon hearing, and upon reading the affidavit of, filed the day of, 19.., and..... :

It is ordered that the plaintiff's bill of costs, charges and disbursements delivered to the defendant, for the recovery of which this action is brought, be taxed, and that the plaintiff give credit at the time of taxation for all sums of money by him received from or on account of the defendant.

And it is further ordered that the plaintiff do not prosecute this action touching the demand pending the taxation.

And it is further ordered that upon payment of what, (if anything), may appear to be due to the plaintiff, together with the costs of this action (which are to be also taxed and paid), all further proceedings therein be stayed, and that the costs of this application be.....

Dated the day of, 19..

No. 41.**INTERPLEADER ORDER (No. 1.) (O. 56.)**

19.. *(Here put the letter and number.)*

In the Supreme Court.

In Chambers.

Between....., Plaintiff
and
....., Defendant.

and between

....., Claimant,
and
....., Respondent.

Upon hearing and upon reading the affidavit of,
filed the day of, 19.., and

Appx. K.
Nos. 41A, 42.

It is ordered that the claimant be barred, that no action be
brought against the above-named (Sheriff) and that the costs
of this application be

Dated the day of, 19..

No. 41, A.

INTERPLEADER ORDER (No. 1, A.) (O. 56.)

19.., No..

In the Supreme Court.

..... in Chambers.
Between Plaintiff,
and
..... Defendant,
Claimant.

Upon hearing the solicitors for the plaintiff, the claimant, and
the sheriff of, and reading the affidavit of

It is ordered that the sheriff withdraw from possession of the
goods seized by him under the writ of execution herein and claimed
by the claimant, that no action be brought.

And that the pay to the the costs of the inter-
pleader to be taxed, and possession money to the sheriff.

Dated the day of, 19..

No. 42.

INTERPLEADER ORDER (No. 2.) (O. 56.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between, Plaintiff,
and
... .., Defendant,
and
... .., Claimant.

Upon hearing, and upon reading the affidavit of
filed the day of, 19.., and

It is ordered that the above-named claimant be substituted as
defendant in this action in lieu of the present defendant, and the
costs of this application be

Dated the day of, 19..

Appx. K.
Nos. 43, 44.

No. 43.

INTERPLEADER ORDER (No. 3.) (O. 56.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between, Plaintiff,
 and
, Defendant.

and between

....., Claimant,

and the said, execution creditor, and, the Sheriff
 of, Respondents.

Upon hearing, and upon reading the affidavit of,
 filed the.....day of....., 19.., and

It is ordered that the said Sheriff proceed to sell the goods seized by him under the writ of execution issued herein, and claimed by the claimant, and pay the net proceeds of the sale, after deducting the expenses thereof, into Court in this cause, to abide further order herein.

And it is further ordered that the parties proceed to the trial of an issue in the Supreme Court, in which the said claimant shall be the plaintiff, and the said execution creditor shall be the defendant, and the question to be tried shall be whether at the time of the seizure by the sheriff the said goods seized were the property of the claimant as against the execution creditor.

And it is further ordered that this issue be prepared and delivered by the plaintiff therein within from this date, and be returned by the defendant therein within days, and be tried at

And it is further ordered that the question of costs and all further questions be reserved until the trial of the said issue, and that no action shall be brought against the said sheriff for the seizure of the said goods.

Dated the day of 19..

No. 44.

INTERPLEADER ORDER, (No. 4.) (O. 56.)

(*Heading as in Form 43.*)

Upon hearing, &c.

It is ordered that upon payment of the sum of \$.....into Court by the said claimant within.....from this date, or upon his giving within the same time security to the satisfaction of a Judge (*or as the case may be*) for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of execution herein and claimed by the claimant.

And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court, in the cause, to abide further order herein.

**Appx. K.
Nos. 45, 46.**

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of 19..

No. 45.

INTERPLEADER ORDER (No. 5.) (O. 56.)

(Heading as in Form 43.)

Upon hearing, &c.

It is ordered that upon payment of the sum of \$....into Court by the said claimant, or upon his giving security to the satisfaction of a Judge (*or, as the case may be*), for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of execution issued herein.

And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof, and the possession money from this date, into Court in the cause, to abide further order herein.

And it is further ordered that the parties proceed, &c.

And it is further ordered that this issue, &c.

And it is further ordered that the question of costs, &c.

Dated the day of, 19..

No. 46.

INTERPLEADER ORDER, (No. 6.) (O. 56.)

(Heading as in Form 43.)

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing....., and upon reading the affidavit of....., filed theday of....., 19.., and.....

It is ordered that.....

And that the costs of this application be.....

Dated the day of, 19..

Appx. K.
Nos. 47-49.**No. 47.**

INTERPLEADER ORDER, (No. 7.) (O. 56.)

(Heading as in Form 43.)

Upon hearing, and upon reading the affidavit of
filed the day of 19.., and

It is ordered that the above-named sheriff proceed to sell enough of the goods seized under the writ of execution issued in this action to satisfy expenses of the said sale, the rent (if any) due the claimant, and this execution.

And it is further ordered that out of the proceeds of the said sale (after deducting the expenses thereof, and rent, if any), the said sheriff pay to the claimant the amount of his said claim, and to the execution creditor the amount of his execution, and the residue, if any, to the defendant.

And it is further ordered that no action be brought against the said sheriff, and that the costs of this application be.....

Dated the day of, 19..

No. 48.

ORDER DISMISSING SUMMONS (GENERALLY.)

(Heading as in Form 1.)

Upon hearing and upon reading the affidavit of
filed the day of 19.., and

It is ordered that the application of be dismissed with costs to be taxed and paid by the to the (*or*, and that the costs of and occasioned by this application be the.....'s in any event.)

Dated the day of 19..

No. 49.

ORDER TO REPLEVY. (O. 45, r. 1.)

19.. (*Here put the letter and number.*)

In the Supreme Court.

Between A. B., Plaintiff,
and
C. D., Defendant.

By virtue of the provisions of the Rules of the Supreme Court, I hereby authorize and direct you without delay on security being given you according to said Rules (Order XLV), to replevy and deliver to the said A. B. the goods and chattels (*or* cattle) which he claims in this suit, and which are of the value of \$.... (*here insert the value stated in the affidavit*) and which he alleges that the said C. D. unjustly detains; that is to say:—(*Here describe the goods, &c., to be replevied*), and forthwith to return to me this order, and what you shall have done under the same.

Dated the day of 19..

(Signed,)

Prothy. Sup. Ct., Co. of.....

To the High Sheriff of the
County of.....

No. 50.

AFFIDAVIT FOR REPLEVIN. (O. 45, r. 2.)

Appx. K.
Nos. 50—52.*(Heading as above.)*

I, A. B., of....., in the County of....., make oath and say :

That I have the right to the possession of the following cattle (*or goods, as the case may be*), to wit:....., as I verily believe, and that C. D. unjustly detains the same; and that the said cattle (*or goods, as the case may be*), are to the best of my belief, of the value of.....dollars.

Sworn to at....., this.....day
of....., A. D. 19.., before me,

No. 51.

BOND FOR REPLEVIN (O. 45, r. 5.)

[*Bond in the usual form from A. B., (plaintiff,) and E. F., and G. H.*]

Whereas, the said A. B., has obtained an order for replevin against C. D. to obtain possession of certain cattle (*or goods*) to wit:....., which the said A. B. asserts to be his property.

Now, the condition of this obligation is such, that if the said A. B. shall not prosecute his suit in which the said order was made, with effect and without delay, or if suit is carried on and continued between the said A. B. and C. D. touching the property of the said cattle (*or goods*) and the Court shall adjudge that the said cattle (*or goods*) shall be restored to the said C. D. with damages for detaining the same, then if the said A. B. shall restore the said cattle (*or goods*) and pay and satisfy any judgment that may be obtained against him, this bond shall become void.

(Where the plaintiff himself does not join in the bond, the form must be altered to conform to the fact.)

No. 52.

BOND TO OBTAIN RETURN OF THE PROPERTY. (O. 45, r. 9.)

[*Bond in the usual form from C. D. (defendant) and E. F. and G. H.*]

Whereas, the said C. D. claims to retain certain cattle (*or goods*) to wit:....., to recover possession of which A. B. has obtained an order for replevin.

Now, the condition of this obligation is such, that if the Court adjudges that the said cattle (*or goods*) shall be restored to the said A. B. with or without damages for detaining the same, then if the said C. D. restores the said cattle (*or goods*), and pays and satisfies any judgment that is recovered against him, this obligation shall be void, but otherwise shall remain in force.

(Where the defendant himself does not join in the bond, the form must be altered to conform to the fact.)

Appx. K.
Nos. 53—55.

No. 53.

ORDER FOR EXAMINATION TOUCHING MEANS.

19.. (*Here put the letter and number.*)

In the Supreme Court.

In Chambers.

Between, Judgment Creditor,
and
....., Judgment Debtor.

On hearing.....and on reading the affidavit of.....
filed the day of....., 19.., and.....

It is ordered that the above-named (*or that*, an officer of the defendant corporation) attend before the Judge at Chambers, on the day of, 19.., at in the noon, to be examined on oath touching his means (*or the means of the said corporation*), of paying the judgment debt, and that the costs of this application be

Dated the.....day of....., 19..

No. 54.

ORDER TO BRING UP WITNESS IN CRIMINAL CUSTODY.

[*Heading as in Form 1.*]

Upon reading the affidavit of

It is ordered that the keeper of Her Majesty's prison at shall have before, on the day of, 19.., at o'clock in the forenoon, the body of, a prisoner in his custody (as it is said), then and there to testify the truth and give evidence in this, on behalf of, and so on from day to day until his attendance as such witness shall be no longer required, and thereupon he be taken back without delay to the said prison and there detained until he be discharged by due course of law.

Dated the.....day of.....19..

No. 55.

RECEIVER ORDER INTERIM (O. 50, r. 6.)

(*Heading as in Form 1.*)

Upon the application of for the plaintiff and the plaintiff by his undertaking to be answerable for all sums to be received by the receiver hereinafter named.

It is ordered that be appointed without security until the day of next inclusive or further order to receive the rents and profit of, but without prejudice to the rights of any prior incumbrancer or his possession (if any) and the tenants of the said estate are (without prejudice as aforesaid) to attorn and pay their rents in arrear and growing rents to the said so long as he shall continue to be such receiver, and that all questions as to passing his accounts and payments thereunder and all further questions be reserved until further order.

Defendant to be at liberty to apply in meantime.

Dated the.....day of....., 19..

No. 56.

RECEIVER ORDER. (O. 50, r. 6.)

Appx. K.
Nos. 56, 57.*(Heading as in Form 1.)*

Upon hearing for the plaintiff, and upon reading the affidavit of

It is ordered that be appointed receiver upon first giving security by bond to the satisfaction of one of the Judges of the Supreme Court, to receive the rents, profits, and moneys receivable in respect of the following property (that is to say):

But this appointment is to be without prejudice to the rights of any prior incumbrancers upon the said premises, who may think proper to take possession of or receive the same by virtue of their respective securities, or, if any prior incumbrancer is in possession, then without prejudice to such possession.

And that the tenants of the said premises do attorn and pay their rents in arrear and growing rents to such receiver. And that such receiver have liberty, if he shall think proper (but not otherwise), out of the rents, profits, and moneys to be received by him, to keep down the interest upon the prior incumbrances, according to their priorities, and be allowed such payments (if any) in passing his accounts, and that such receiver shall on the day of next, and at such further and other times as may be ordered by the Judge, leave and pass such accounts, and shall on the day of next, and at such further and other times as may be hereafter ordered by the Judge, pay the balance or balances appearing due on the accounts so left or such part thereof as shall be certified as proper to be so paid; such sums to be paid in or towards satisfaction of what shall for the time being be due in respect of the judgment signed on the day of for the sum of \$..... debt, and \$ for costs, making together the sum of \$.....; and that the costs of this order and of carrying the same into effect and of obtaining the discharge of the receiver shall be primarily payable out of the sums received by the receiver, but if there shall be no sums received or the amount shall be insufficient, the amount of the deficiency shall be paid by the judgment debtor to the judgment creditor.

It is further ordered that the balance (if any) remaining in the hands of the receiver, after making the several payments aforesaid, shall forthwith be paid by the receiver into Court to the credit of this action, subject to further order.

And any of the parties are to be at liberty to apply to the Judge in Chambers as there may be occasion.

Dated the day of 19..

No. 57.

ORDER FOR INTERIM INJUNCTION. (O. 50, r. 6.)

(Heading as in Form 1.)

Upon hearing.....for the plaintiff and upon reading the affidavit of filed the.....day of.....19.., and the plaintiff by his said.....undertaking to abide by any order the Court or a Judge may make as to damages in case the Court or a Judge should hereafter be of opinion that the defendant.....shall have sus-

**Appx. K.
Nos. 58—60.**

tained any by reason of this order which the plaintiff ought to pay. It is ordered and directed that the defendant his agents and servants and every of them be restrained and an injunction is hereby granted restraining them and every of them from until after the trial of this action or until further order.

Dated this day of, 19..

No. 58.

ORDER TO TRY BY JURY. (O. 34, r. 6.)

(Heading as in Form 1.)

Upon hearing the solicitors on both sides.

It is ordered that this action be tried with a jury.

And that the costs of this application be

Dated the day of, 19..

No. 59.

ORDER FOR VIEW BY JURY. (O. 50, rr. 3, 5.)

(Heading as in Form 1.)

Upon hearing the solicitors on both sides and upon reading the affidavit of, filed herein.

It is ordered that a view of the place in question be had as prescribed by the statutes and rules of Court in that case made and provided, and that the sheriff of the County of do have six or more of the jurors summoned for the trial of this action, to view the place in question, and before the trial thereof, on the day of 19.., that the said jurors do meet at the house of known by the name of and that on the part of the plaintiff and on the part of the defendant do attend the same day and show the place in question to the said six or more of the said jurors, and that no evidence be given on either side. The hereby consenting that in case no view be had, or if a view shall be had by any of the said jurors that the trial of this action shall proceed, and that no objection shall be made on account thereof.

Dated the day of 19..

No. 60.

ORDER FOR SECURITY FOR COSTS.

(Heading as in Form 1.)

Upon hearing the solicitors on both sides, and reading the affidavit of

It is ordered that the plaintiff give security for the defendant's costs in this action to the satisfaction of the Judge, and that in the meantime all further proceedings be stayed.

And that the costs of such application be

Dated the day of, 19..

No. 61.

ORDER FOR SERVICE IN CASE OF VACANT PREMISES.
(O. 9, r. 9.)

Appx. L.
Nos. 1, 2.

(Heading as in Form 1.)

Upon reading the affidavit of.....

It is ordered that service of the writ of summons in this action under Order IX, Rule 9, be good and sufficient service of the said writ for the recovery of possession of the land or property claimed in this action.

Dated the.....day of....., 19..

APPENDIX L.

EQUITY OR CHANCERY BUSINESS.

No. 1.

Summons.

In the Supreme Court,, 19..

In the matter of the estate of A. B., late of....., in the County of....., deceased.....

Or

Between C. D., petitioner,
and
E. F., defendant.

The defendant E. F. (or G. H., of, &c.,) is hereby summoned to attend at Chambers on.....the.....day of....., at....o'clock in the.....noon, to be examined, (or to be examined as a witness) on the part of the, for the purpose of the proceedings directed by Mr. Justice....., to be taken.....

Dated thisday of19..

X. Y.,
Prothy.

This summons was taken out by.....of....., in the County of....., solicitors for.....

No. 2.

ADVERTISEMENT FOR CLAIMANTS NOT BEING CREDITORS.
(O. 55, r. 32.)

Pursuant to a judgment (or order) of the Supreme Court made in (the matter of the estate of....., and in) an action by..... against....., the persons claiming to be next of kin to (or the

Appx. L.
Nos. 3, 4.

heir of, *as the case may be*)....., late of....., in the county of....., who died in or about the month of....., are by their solicitors, on or before the.....day of....., to come in and prove their claims at Chambers at the Court House, in Halifax, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment (*or order*.) The.....day of....., at.....o'clock in the.....noon, at Chambers, is appointed for hearing and adjudicating upon the claims.

Dated the.....day of....., 19..

A. B.,
Prothy.

No. 3.

ADVERTISEMENT FOR CREDITORS. (O. 55, r. 32.)

Pursuant to a judgment (*or an order*) of the Supreme Court made in (the matter of the estate of A. B., and in) an action S. against P., the creditors of A. B., late of....., in the county of....., who died in or about the month of....., 19.., are on or before the.....day of....., 19.., to send by post, prepaid, to E. F., of....., the solicitor of the defendant C. D., the executor (*or administrator*) of the deceased (*or as may be directed*), their Christian and surname, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any), held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment (*or order*.) Every creditor holding any security is to produce the same before the Judge, presiding at Chambers, in Halifax, on the.....day of....., 19.., at.....o'clock in the.....noon, being the time appointed for adjudication on the claims.

Dated the day of 19..

G. H.,
Prothy.

No. 4.

NOTICE TO CREDITOR TO PRODUCE DOCUMENTS. (O. 55, r. 34.)

(*Short Title.*)

You are hereby required to produce in support of the claim sent in by you against the estate of A. B., deceased, (*describe the document required to be produced*), before Mr. Justice....., at Chambers, at the County Court House in Halifax, on the.....day of....., at.....o'clock in the.....noon.

Dated the.....day of....., 19..

G. R., of &c., solicitor for plaintiff (*or defendant, or as the case may be.*)

To Mr. S. T.

No. 5.**Appx. L.**
Nos. 5-6.**AFFIDAVIT OF EXECUTOR OR ADMINISTRATOR AS TO CLAIMS OF CREDITORS. (O. 55, r. 36.)**

In the Supreme Court.

(Title.)

We, C. D., of &c., the above-named plaintiff (*or defendant, or as may be*), the executor (*or administrator*) of A. B., late of....., in the County of....., deceased, and E. F., of &c., solicitor, severally make oath and say as follows:—

I, the said E. F., for myself, say as follows:

1. I have in the paper writing now produced and shown to me and marked A., set forth a list of all the claims, the particulars of which have been sent in to me by persons claiming to be creditors of the said A. B., deceased, pursuant to the advertisement issued in that behalf, dated the.....day of....., 19..

And I, the said C. D., for myself, say as follows:

2. I have examined the particulars of the several claims mentioned in the paper writing now produced and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said A. B. (*or as may be, and state any other inquiries or investigations made*), in order to ascertain, so far as I am able, to which of such claims the estate of the said A. B. is justly liable.

3. From such examination (*and state any other reasons*) I am of opinion and verily believe, that the estate of the said A. B. is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked A., and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said A. B., and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said A. B. is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants (*or I am not able to state whether the estate of the said A. B. is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence.*)

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information, and belief, any other claims against the estate of the said A. B.

Sworn, &c.

No. 6.**EXHIBIT REFERRED TO IN AFFIDAVIT (No. 5.) (O. 55, r. 36.)**

A.

(Short Title.)

List of claims, the particulars of which have been sent in to E. F., the solicitor of the plaintiff (*or defendant, or as may be*), by persons claiming to be creditors of A. B., deceased, pursuant to the advertisement issued in that behalf, dated the.....day of....., 19..

Appx. L.
No. 7.

This paper writing marked A., was produced and shown to, and is the same as referred to in his affidavit sworn before me this.....day of....., 19..

W. B. &c.

FIRST PART.—Claims proper to be allowed without further evidence.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of claim.	Amount claimed.	Amount proper to be allowed.
				\$	\$

SECOND PART.—Claims which ought to be proved by the Claimants.

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.
				\$

No. 7.

NOTICE TO CREDITOR OF ALLOWANCE OF CLAIM. (O. 55, r. 40.)

(Short Title.)

The claim sent in by you against the estate of A. B., deceased, has been allowed at the sum of \$....., with interest thereon at \$.....per centum per annum, from the.....day of....., 19.., and \$.....for costs.

(If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and to give notice thereof to me on or before the..... day of....., 19.. next, and to attend by your solicitor at..... Chambers at the Court House in Halifax, on.....day of....., 19.., at.....o'clock in the.....noon, being the time appointed for adjudicating on the claim.)

Dated this.....day of....., 19..

G. R., of, &c., Solicitor for the plaintiff (or defendant, or as may be.)

To Mr. P. R.

No. 8.

NOTICE TO CREDITOR TO PROVE HIS CLAIM. (O. 55, r. 40.)

Appx. L.
Nos. 8, 9.*(Short Title.)*

You are hereby required to prove the claim sent in by you against the estate of A. B., deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the.....day of.....next, and to attend by your solicitor at Chambers at the County Court House at Halifax, on the.....day of....., 19.., at.....o'clock in thenoon, being the time appointed for adjudicating on the claim.

Dated the day of,, 19..

G. R., of, &c., solicitor for the plaintiff (*or*, defendant, *or as may be.*)

To Mr. S. T.

No. 9.

CERTIFICATE OF REFEREE. (O. 55, r. 47, H.)

(Title.)

In pursuance of the directions given to me by Mr. Justice, I hereby certify that the result of the accounts and inquiries which have been taken and made in pursuance of the judgment (*or order*) in this cause dated the.....day of....., is as follows :

1. The defendants.....the executors of....., the testator, have received personal estate to the amount of \$....., and they have paid, or are entitled to be allowed, on account thereof, sums to the amount of \$....., leaving a balance due from (*or to*) them of \$.....on that account.

The particulars of the above receipts and payments appear in the account marked....., verified by the affidavit of....., filed on the.....day of....., and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums, (*state the same here or in a schedule*) and except that I have disallowed the items of disbursement in the said account numbered....., and,

(Or in cases where a transcript has been made.)

The defendants.....have brought in an account verified by the affidavit of....., filed on the.....day of.....and which account is marked.....and is to be filed with this certificate. The account has been altered, and the amount marked....., and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed, are set forth in the.....Schedule hereto, and with the interest thereon and costs mentioned in the Schedule, are due to the persons therein named, and amount altogether to \$.....

3. The funeral expenses of the testator amount to the sum of \$....., which I have allowed the said executors in the said account of personal estate.

Appx. L.
No. 10.

4. The legacies given by the testator are set forth in the..... Schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to \$.....

5. The outstanding personal estate of the testator consists of the particulars set forth in the.....Schedule hereto.

5. The real estate to which the testator was entitled consists of the particulars set forth in the.....Schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c., (*in a form similar to that provided with respect to the personal estate.*)

8. The incumbrances affecting the said testator's real estate are specified in the.....Schedule hereto.

9. The real estates of the testator directed to be sold, have been sold, and the purchase moneys, amounting altogether to \$....., have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement; the evidence produced is to be stated as follows:—

The evidence produced on this account (*or inquiry*) consists of the probate of the testator's will, the affidavit of A. B., filed..... and paragraph numbered.....of the affidavit of C. D., filed.

No. 10.

AFFIDAVIT VERIFYING ACCOUNTS AND ANSWERING USUAL INQUIRIES AS TO REAL AND PERSONAL ESTATE. (O. 55, r. 49.)

In the Supreme Court.

(*Title.*)

We, A. B., of &c.,....., C. D., of &c.,....., E. F., of &c.,the above-named defendants, severally make oath and say as follows:

1. We have according to the best of our knowledge, information and belief, set forth in Schedule I hereto, a full account and inventory of the personal estate of or to which G. H....., the testator in the judgment (*or order*) dated....., made in this action (*or matter*) named, who died on the.....day of....., was possessed or entitled at the time of his death, and not by him specifically bequeathed.

2. Save what is set forth in the said Schedule I, and what is by the said testator specifically bequeathed, the said testator was not to the best of our knowledge, information or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us, or any of us, on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursement numbered..... andin the account hereinafter referred to (*or if not paid, it should be so stated, with the amount due and to whom due.*)

**APPX. I.
No. 10.**

4. We have in the account marked A., now produced and shown to us, according to the best of our knowledge, information and belief, set forth a full account of the personal estate of the said testator, not by him specifically bequeathed, which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, with the times when, the names of the persons from whom, and on what account, the same has been received, and also a like account of the disbursements, allowances and payments made by us or any of us on account of the said testator's funeral expenses, debts and personal estate, together with the times when, the names of the persons to whom, and the purposes for which, the same were disbursed, paid or paid.

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A, we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A does not contain any item of disbursement, allowance, or payment, other than such as has actually been disbursed, paid or allowed on the account aforesaid.

6. To the best of our knowledge, information and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II, hereto.

7. Save what is set forth in Schedule II, there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information and belief, set forth in Schedule III, hereto the particulars of all the real estate which the said G. H. was seized of or entitled to at the date of his death.

9. Save what is set forth in the said schedule, the said testator was not to the best of our knowledge, information or belief, at the time of his death seized of or entitled to any real estate, whatsoever.

10. We have, according to the best of our knowledge, information and belief, set forth in Schedule IV hereto, the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

11. We have in the account marked B, now produced and shown to us, according to the best of our knowledge, information and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say

Appx. L.
No. 10.

that, except as appears in the said account marked B, we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

THE FIRST SCHEDULE above referred to.

1. \$100 cash in the house.
 2. \$400 cash at the testator's bankers, Messrs. A. and B.
 3. \$1,000 Dominion of Canada Stock, standing in the testator's name.
 4. \$50 due from John James, for half year's rent of house at, to 1st May, 1901.
 5. \$140 balance remaining due from John Thomas on account of half year's rent of farm at....., to.....
 6. \$300, a debt due from Samuel Jones on a bond, with interest from....., at.....per cent.
 7. A leasehold house situate at....., held under a lease for a term of....., which will expire on....., at a rent of \$..... a year, underlet to James Evans for a term which will expire on, at a rent of \$50 a year.
 8. \$25, half a year's rent due from the said James Evans to
-

THE SECOND SCHEDULE above referred to.

(The particulars to be set forth in the same manner as above.)

THE THIRD SCHEDULE above referred to.

(To contain a short particular of the real estate.)

THE FOURTH SCHEDULE above referred to.

(To contain a short particular of the incumbrances, and showing what part of the above real estate is subject to each.)

No. 11.

*Account of Personal Estate, being Account A., referred to in
Form No. 10. (O. 55, i. 49.)*

A.

In the Supreme Court.

(Title.)

This account marked A was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this.....day of.....

Before me (*To be signed here by Commissioner or officer before whom the affidavit is sworn.*)

RECEIPTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account received.	Amount received.
1	19....	Found in house.....	\$
2		Evans and Co....	Balance at bankers.....	
3		.....	Half year's dividend on \$1,000 stock.
4		John James.....	Half year's rent of house from—to.....	
5		Samuel Jones....	Bond debt of \$300 and interest from—to.....	
6		James Evans....	Half year's rent of leasehold house due —	
7		William Williams	Produce of sale of the above leasehold house.....	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
1	19....	James Price.....	Undertaker's bill for funeral.....	\$
2		Messrs. A. & B....	Expenses of Probate....	
3		John George.....	A debt due to him for medical attendance..	
4		James Price.....	Bond debt of \$1,000 and \$25 for interest thereon from—to.....	

APPX. L.
No. 12.

No. 12.

*Account of Rents and Profits, being the Account B referred to in
No. 10. (O. 55, r. 49.)*

B.

In the Supreme Court.

(Title.)

This account marked B was produced and shown to A. B., C. D., and E. F., and is the account referred to in their affidavit sworn this.....day of.....

Before me (*to be signed here by Commissioner or officer before whom affidavit sworn.*)

RECEIPTS.

No. of Item.	Date when received.	Names of persons from whom received.	On what account and in respect of what part of the Estate received, and when due.	Amount received.
1	19....	John James.....	Half year's rent for farm in town of _____, due.....	\$
2		Thomas James...	One quarter year's rent of house at _____, due.....	
3		John James.....	Same as No. 1, due.——	

DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of persons to whom paid or allowed.	For what purpose paid and allowed.	Amount paid or allowed.
1	19....	Sun Insurance Office	One year's insurance against fire, due——	\$
2		Thomas Carpenter	Repairs at John James' farm	
3		James Francis.....	City Tax, half year due 10th October.	

No. 13.

RECEIVER'S ACCOUNT. (O. 50, r. 19.)

(Title.)

(To accord with the Order.)

The [.....] Account of A. B., the Receiver appointed in this Cause [or pursuant to] an order made in this Cause, dated theday of.....to receive the rents and profits of the Real Estate, and to collect and get in the outstanding Personal Estate of C. D., the testator [or, intestate] in this Cause named, from theday of.....to theday of.....

REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenant's Name.	Description of premises.	Annual Rent.	Arrears due at	Amount due at	Amount received.	Arrears remaining due.	Observations.
1		John Jones ...	Home farm in the Town of Horton, in the County of Kings.	\$	\$	\$	\$		
2		Thomas Jones.	House at Horton, aforesaid.						

Appx. L.
No. 13.

SUMMARY.

Amount of balance due from Receiver on account of real estate on last account.....	\$	C.	\$	C.
Amount of receipts on the above account of real estate.....	"	"	"	"
Balance of last account paid into Court.....	\$	C.		
Amount of payments and allowances on the above account of real estate.....	"	"		
Amount of Receiver's costs of passing this account as to real estate.....	"	"		
Balance due from the Receiver on account of real estate.....	\$			
Amount of balance due from Receiver on last account of personal estate.....	\$	C.	\$	C.
Amount of receipts on the above account of personal estate.....	"	"	"	"
Balance of last account paid into Court.....	\$	C.		
Amount of payments and allowances on the above account of personal estate.....	"	"		
Amount of Receiver's costs of passing this account as to personal estate.....	"	"		
Balance due from the Receiver on account of personal estate.....	\$			

Appx. L.
Nos. 14, 15.

No. 14.**ORDINARY CONDITIONS OF SALE. (O. 51, r. 7.)****Conditions of Sale.**

1. No person is to advance less than \$..... at each bidding.
 2. The sale is subject to a reserved bidding for each lot which has been fixed by the Judge.
 3. Each purchaser is at the time of sale to subscribe his name and address to his bidding, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.
 4. Each purchaser is at the time of sale to pay a deposit of \$..... per cent. on the amount of his purchase money to, the person authorized to receive the same.
 5. Each purchaser is upon application to pay the amount of his purchase money (after deducting the amount paid as a deposit) on or before the day of, and if the same is not so paid, then the purchaser is to pay interest on his purchase money, including the amount of such valuation at the rate of \$..... per cent. per annum from the day of to the day on which the same is actually paid. Upon payment of the purchase money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the day of, down to which time all outgoings are to be paid by the vendors.
 6. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the Judge at Chambers.
- (Add to these such conditions respecting the title and title deeds as may be necessary or proper.)*

Lastly. If the purchaser shall not pay his purchase money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made upon application at Chambers, for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such re-sale and of all costs and expenses occasioned by such default.

No. 15.**AFFIDAVIT OF RESULT OF SALE. (O. 55, r. 49.)**

In the Supreme Court. *i*

(Title.)

I, A. B., of &c., the person directed to sell the estates comprised in the particulars hereinafter referred to, do make oath and say as follows:—

1. I did at the time and place, in the lots, and subject to the conditions specified in the particulars and conditions of sale now

produced and shown to me, and marked with the letter A, put up for sale by auction the estates described in such particulars. The result of such sale is truly set forth in the bidding paper marked with the letter B, now produced and shown to me.

2. The sums set forth in the second column of such bidding paper are the highest sums bid for the respective lots, the numbers of which are set forth in the first column opposite to such respective sums, and the persons whose names are subscribed in the third column of such bidding paper as purchasers were respectively the highest bidders for and became the purchasers of the respective lots the numbers whereof are set opposite to such respective names in the said first column of the said bidding paper at the prices or sums set opposite to their respective names in the said second column thereof.

3. The several lots opposite to the numbers of which I have in the third column of the said bidding paper written the words "not sold" were not sold, no person having bid a sum equal to or higher than the reserved bidding fixed by the said Judge.

4. No person bid any sum whatever for either of the lots opposite the numbers of which I have in the second column of the said bidding paper written the words "no bidding."

5. The said sale was conducted by me in a fair, open and candid manner, and according to the best of my skill and judgment.

6. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of such schedule opposite the said respective sums in respect of their said respective purchase moneys, leaving due in respect of the said purchase moneys the respective sums set forth in the fifth column of the said schedule.

THE SCHEDULE above referred to

No. of Lot.	Name of Purchaser.	Amount of purchase money.	Amount of deposit received.	Amount remaining due.

No. 16.

Appx. L.
Nos. 16, 17.

LIST OF DEBTS ALLOWED. (O. 55, r. 49.)

James v. Jones.

List of Debts.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest & Costs.	Total Amount due
2	James Allen...	Halifax, in the County of Halifax, Surgeon.....	\$100 00	\$106 20
		Interest.....	4 00	
		Costs.....	2 20	
1	Charles Cohen.	Windsor, in the County of Hants, Gentleman, executor of John Thomas.....	\$67 00	73 40
		Interest from fifth October, 1882, at \$6 per cent.....	4 20	
		Costs.....	2 20	
5	John Dennis and Owen Thomas }	Truro, County of Colchester, Grocers, and co-partners.....	\$100 00	171 50
		Interest from 16th October, 1882, at \$6 per cent.....	5 00	
		Another debt.....	62 00	
		Interest.....	2 10	
		Costs.....	2 40	

No. 17.**LIST OF LEGACIES REMAINING UNPAID. (O. 55, r. 49.)**

James v. Jones.

List of Legacies.

Names of Legatees.	Description.	Amount of Principal and Interest.	Total Amount due.
James Oliver.....	Son of Testator, an infant.....	\$100 00	\$107 50
	Interest.....	7 50	
Mary Russell.....	Of Windsor, widow.....	50 00	54 80
	Interest from 1st January, 1880, the death of testator.....	4 80	
Jane, the wife of John Williams.....	Of Halifax, Esq.....	250 00	214 11
	Paid in part.....	50 00	
	Interest.....	200 00	
		14 11	
		Total—\$	

No. 18.**Appx. L.**
Nos. 18, 19.

LIST OF APPORTIONMENTS AMONG CREDITORS OR LEGATEES.

(O. 55, r. 49.)

Apportionment among Creditors (or Legatees.)

Names of Creditors (or Legatees.)	Addresses.	Amounts before certified to be due and sub- sequent interest.	Totals due.	Amounts appor- tioned.
John Jones.....	Halifax, woollen draper... Subsequent interest	\$200 00 17 10	\$217 10	\$57 10
Thomas Young and Robert Young....	Truro, in the County of Col- chester, Executors of Wm. Young, deceased. Subsequent interest.....	200 00 17 10		
			217 10	57 40
			Total—\$	

No. 19.

RECEIVER'S RECOGNIZANCE. (O. 50, r. 16.)

....., of, of, and, of

Before our Sovereign Lady the Queen in her Supreme Court of Nova Scotia personally appearing, do acknowledge themselves, and each of them doth acknowledge himself, to owe to Prothonotary of the said Supreme Court at the sum of, to be paid to the said or his executors, administrators or assignus, and unless they do pay the same they, the said do grant, and each of them doth grant for himself, his heirs, executors and administrators, that the said sum of shall be levied, recovered, and received of and from them and each of them, and of and from all and singular the messuages, lands, tenements, and hereditaments, goods and chattels, of them and each of them wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth, at the day of, 19..

Whereas, by an order of the said Supreme Court made in a cause wherein.....are plaintiffs, and defendants, and dated the.....day of.....

It was ordered that a proper person should be appointed to receive (or that upon the above bounden first giving security he should be appointed receiver of) the rents and profits of the real estate, and to collect and get in the outstanding personal estate of in the said order named. And whereas a Judge hath (*ap- proved of the said as a proper person to be such receiver, and hath*) approved of the above bounden and as sureties for the said, and hath also approved of the above-written recognizance with the under-written condition as a proper security to be entered into by the said.....and pursuant to the said order and Rules of the said Court in that behalf, and in testimony of such approbation the Judge hath signed an allowance in the margin hereof.

APPX. L.
Nos. 20, 24.

Now the condition of the above-written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said, at such periods as a Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or a Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

No. 20.

AFFIDAVIT VERIFYING RECEIVER'S ACCOUNT. (O. 50, 1. 20.)

In the Supreme Court.

(Title.)

I,, of, the receiver appointed in this cause, make oath and say as follows:

1. That account marked with the letter A, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the outstanding personal estate of*, the testator [or intestate] in this cause, from the day of, 19.., to the day of, 19.., both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order, or to my knowledge or belief, for my use on account, or in respect of the *said rents and profits accrued due on or before the said day of on an account or in respect of the said personal estate*, except what is included as received in my former account [or accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. Z..... the sureties named in the recognizance, dated the day of, 19.., are both alive, and neither of them has become insolvent.

* * * * *

No. 24.

FORM OF ORDERING ACCOUNTS AND INQUIRIES. (O. 32, r. 7.)

This Court doth order that the following accounts and inquiry be taken and made, that is to say:

1. An account of the personal estate not specifically bequeathed of A. B., deceased, the testator in the pleadings named, come to the hands of &c.

Appx. L.
No. 25.

2. An account of the testator's debts.
3. An account of the testator's funeral expenses.
4. An account of the testator's legacies and annuities (if any) given by the testator's will.
5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken, that is to say:—

6. An inquiry what real estate the testator was seized of or entitled to at the time of his death.

7. An account of the rents and profits of the testator's real estate received by, &c.

8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If sale ordered,)

9. An account of what is due to such incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry, what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the Judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

No. 25.

CONSENT TO ACT. (O. 36, r. 18 A.)

I, A. B.,, of, hereby consent to act as a trustee of the [*describe the instrument.*]

(Signed), A. B.

I, C. D.,, of, solicitor, hereby certify that the above-written signature is the signature of A. B., the person mentioned in the above-written consent.

(Signed),

C. D., solicitor for the said A. B.

Appx. M.APPENDIX M.

PAYMENT INTO AND OUT OF COURT. (O. 22, r. II.)

1. Where it is directed by the Court or a Judge that money paid into Court shall be invested, if the same is in the hands of the Prothonotary, it shall be paid over by him to the Accountant General. The Accountant General shall make the investment according to the order of the Court or a Judge, and forthwith report his doings in relation to such investment.

2. The dividends, interest, or income derived from securities in which moneys are invested shall be placed to the same credit as that to which the money was originally paid in.

3. When securities are to be sold, assigned, or in any manner realized, the Accountant General shall, on receipt of the necessary directions, cause the necessary sale, assignment or realization to be made, and the proceeds resulting therefrom shall be placed to the credit of the cause or matter mentioned in the direction, and the Accountant General shall forthwith report to the Court or to the Judge who has made the order for the sale, assignment or realization, what he has done under such order.

4. The books kept by the Prothonotaries and by the Accountant General, relating to payments of money into and out of Court, shall be open at all times for inspection by such persons as the Governor-in-Council may appoint to inspect the same.

INDEX TO JUDICATURE ACT AND RULES.

ABATEMENT.

	PAGE.
Abated causes, when struck out of Cause Book	53
Adding parties becoming interested	51-52
Assignment	51
Bankruptcy	51
Certificate of abatement	53
Death	51
Devolution of estate	51
Marriage	51
Pleas or defence in, abolished	65
<i>See also</i> , Change of Parties by Death, &c.	51-53

ABOLISHED PROCEEDINGS.

Abatement, pleas or defence in, abolished	65
<i>Audita Querela</i> abolished	124
Cross-action where counter-claim will avail	56
Cross-appeal	184
Defectiveness of actions	51
Demurrers	71
Exceptions to affidavits in answer	81
Injunction, to restrain proceedings at law writ of	6 149
Local venue	92
Mandamus, writ of	159
Merger by operation of law	7
New assignments	70
Office of Equity Judge	2
Pleading, rules to be used	56
Prohibition to restrain proceedings at law	6
Rules <i>nisi</i> in certain cases	156
motions for new trials	114
Showing cause in certain cases	156
Subpoena for costs	128
Terms as divisions of legal year, but not as limits of time	9
Writ of Injunction	149
mandamus	159

ABSENT OR ABSCONDING DEBTORS.

Affidavit on suing out attachment, what to state	137
summoning agent, what to state	139
by party objecting to attachment, what to state	138
Agent; affidavit necessary before issue of summons against	139
appearance and declaration to be filed and served by	139
by agent or trustee, when to be made	139
defendant within six months	138
of, for personal examination when required	139-140
entitled to commission, costs and fees, in certain cases	139-140
examination of, before whom and when	139
execution against granted by Court or Judge	140-141
goods and credits in hands of, and choses in action bound by service of process on	139

ABSENT OR ABSCONDING DEBTORS.—Continued.

Agent; issue raised by, trial of..	140
may put in special bail....	141
not appearing, may be proceeded against for contempt	140
third person, claim of..	140
determination of	140
Amount of levy..	137
Appearance, by agent or trustee, when to be made, &c..	139
in default of, after six months, procedure ..	138
Appraisalment of goods	137
Attachment	137
application to set aside....	138
court may direct trial, &c.	138
set aside to have no other effect in suit	138
Bail, special, to relieve property..	141
Costs, amount for which sheriff to levy under attachment ...	137
court or judge may direct security to be given for..	138
of agent and just allowance to be allowed	139-140
when agent liable for	140
Execution, plaintiff to give security before issue of, &c	141
when agent entitled to sue out against plaintiff	139-140
Forms	141-282
Goods, appraisalment to be made when exhibited to sheriff	137
in agent's hands, when bound by service of process..	139
perishable, in discretion of judge, when may be sold	137-138
Judgment may be postponed in certain cases	139
Rehearing, defendant entitled to within three years	141
Trial, new, may be ordered by judge, if dissatisfied..	139
none without attachment or agent's admission	138-139
question of fact arising on inquiry	141
<i>See Foreign Companies</i>	141-143

ACCOUNT (ACTION FOR.)

Affidavit in support of summons	39
Application for an account	39
Indorsement of writ with claim for..	24
Judgment for, when to be brought into chambers	170-171
Order for account; Form, Appendix L, No. 24.	89-334
Summons in order for account ..	39
Stated, how pleaded	62

ACCOUNTS.

Allowances to be made..	89
Creditors, advertisement for	173, 176
Computation of interest generally	176
Forms	322-329
Form of judgment for ..	89, 334
How taken and evidence of..	188
Interest in cases of legacies	176
generally ..	176
where debt does not bear interest	176
Judgment and inquiries in case of personal property	89
Order, notwithstanding further relief sought....	88
Proceedings if delayed	89-90
at chambers	172
Service of notice of judgment or order	47
Summons to proceed....	170, 172
Surcharging	89
Time for bringing in....	170
Verification by affidavit and form....	89-322
Vouchers	89
<i>See Issues, Inquiries and Accounts</i> ..	88-90

ACCOUNTS (ACTIONS INVOLVING).

Reference under statutory proceedings relating to arbitration	95
of damages, matter of account	102
Trial of without jury	94

ACCOUNTANT OF THE SUPREME COURT.

Duties of in respect to moneys paid into and out of Court	336
---	-----

ACTION.

Abatement of	51
Administration. <i>See</i> Parties	45
Declaratory	71
Default..	32, 73
Definition of	1
Discontinuance..	72
For what proceedings substituted....	21
Form and commencement of	21
Joinder of causes of action ..	53, 54
Of mandamus ..	159
Stay of	6
To perpetuate testimony	108, 109

ACTION FOR LAND.

Appearance to	34
by landlord	31
by person not named in writ....	31-32
limiting defence....	32
form....	32-214
Execution in....	119
when it may issue	122
Joining claims in	53, 54
Judgment in default of appearance ..	34
pleading	74
Service of writ in vacant possession	28
Specially indorsed writ in certain landlord and tenant cases	23
Summary judgment where writ specially indorsed ..	37
Title need not be pleaded in certain cases	65
Writ of possession ; form ...	146, 282

ADDITIONAL RULES.

Provision as to making..	18
--------------------------	----

ADDRESS FOR SERVICE.

Indorsement on writ	24
Of plaintiff suing in person	24
Of solicitor..	24
On appearance of defendant or his solicitor	30, 31
Where no writ issued	24

ADJOURNMENT.

From chambers to court	161
For further consideration....	100, 101
In administrations..	175
Of hearing of motion or application..	157
reference	100
trial	97, 98
<i>See</i> Trial.	

ADMINISTRATION.

Advertisements for creditors and claimants....	173, 176
Appearance by person not a party	47, 48
Applications for administrations	166, 167

ADMINISTRATION.—Continued.

Appointment of person to represent estate..	48
Conduct of proceedings	47
Control of trustees	169
Determination of specific questions without administration....	166, 167
Evidence on summons without action	168
Forms of statement of claim ..	233
Forms of defence.. ..	255
Judgment on summons without action.. ..	168
Liberty to attend without order.. ..	47
May apply to court for directions or to judge	169
No administration unless necessary	169
Persons to be served with originating summons	167, 168
Proceedings in chancery chambers in insolvent estates and intestacy	166
Sale in, conduct of	149
Service on certain parties dispensed with ..	45, 46
Special directions as to judgment in chancery chambers ..	168
Summons and order for administration in chancery chambers ..	166, 168
<i>See also</i> , Executor, Accounts, Originating Summons, Parties, Trusts, Chambers.	

ADMINISTRATOR.

Actions by or against	41
Affidavits of claims	174
Denial of representative capacity....	63
Joining claims by or against	54

ADMISSIONS.

By pleading or in writing ..	86
Not specifically denying in pleading	58
Costs when notice comprises documents unnecessary	87, 88
Evidence of admission of documents	87
facts	87
notice to produce documents.. ..	87
Forms	226, 227
Judgment on admissions	87
Notice to admits facts	86, 87, 227
documents	86, 226
produce documents	87, 225
Opponent's statements ..	86

ADVERTISEMENT.

Substituted service by	27, 171-172
------------------------------	-------------

ADVERTISEMENTS FOR CREDITORS AND CLAIMANTS....

Adjournments for directions	173-176
Affidavits in certain cases to be made by administrators or executors may be postponed	175
Allowed claims, list of	176
Claim coming in late	175, 176
Costs to creditors....	176
Creditor need not make affidavit	174
attend except to produce security	174
Executor or administrator to examine claims....	174
Forms	317, 318
Judge, authority of	175
Notice, how given... ..	176
to creditors of result	175
Penalty on creditors for non-compliance....	174
Peremptory advertisement	173
how prepared	173
Persons not attending on advertisement excluded	173
To produce security and deeds and documents on notice....	174
What to contain	174

AFFIDAVITS AND DEPOSITIONS.

Admissibility of at trial to prove particular facts	103
Alterations and interlineations in	111
Answer to interrogatories.....	80
Form of, Appendix B., No. 7.....	224
Applications for money in court	158
Argumentative matter in	110
Attachment of debts, form of	129
Authority to administer oaths	107
Before whom to be sworn.....	110
By receiver, verifying account... ..	151
Form of, No. 20, Appendix L... ..	334
Certified copy may be used	111
Corporation aggregate, required to produce documents, who may make affidavit	86
Commissioner's duty to express time and place of taking	110
Compelling attendance	113
Cross-examination on	109
of deponents	113
Depositions, how taken and signed	105
return and filing of	106
Description of deponent	110
Defects in title or jurat, &c., not fatal	111
Defendant to serve list of affidavits	113
Discovery of documents	81
Form of No. 8, Appendix B	225
Exhibit, alterations in	112
not to be annexed	112
title of certificate on	112
<i>Ex parte</i> order.. ..	112
Filed too late	112
Filing of in chambers	161
Garnishee order, for	129
Hearsay	110
How sworn... ..	110
abroad	110
intituled.	109
Illiterate deponents	111
In reply	112, 113
Interlineation, and alterations... ..	111
Interpleader	179
Form of	231
Intituling	109
Irregularity in.. ..	207
Jurat where several deponents	110
Leave to serve out of jurisdiction	29
May not be sworn before certain persons	111
May be re-used	112
Mode of drawing... ..	110
Must be filed... ..	111
Notice of intention to use affidavit	107, 112
cross-examination of deponent.. ..	113
trial after affidavits closed, &c	113
Notices, how to be received in evidence.. ..	205
On application for account	39
motions generally... ..	156
Plaintiff to file and serve list	113
Reply	112, 113
Scandalous matter may be struck out	111
Service.. ..	33
before whom sworn	28
what to contain	206
Several deponents... ..	110
Showing cause.. ..	37

AFFIDAVITS AND DEPOSITIONS.—Continued.

Signature of deponent necessary....	110
Substituted service....	28
Summons, service of....	28
Subpoena, service of....	108
Trial on....	113
Under Order XIV., r. 1..	37
Verifying accounts....	89
Form of....	322
Verifying admissions....	87
Form of....	225
Writ of summons, service of....	28
Written or printed book-wise....	110
See Evidence, and also Discovery and Inspection	

AFFIRMATION.

Oath includes....	2
-------------------	---

AGENT. <i>See</i> Absconding Debtor ..	139
Foreign Companies....	141
Service of writ of summons on....	143

AGREEMENT.

Of issues of fact without pleadings....	191
---	-----

AMENDMENT..... 76-77

Appeal may be amended....	77
Application for leave....	76
By court or judge....	77
By court of Appeal..	77, 187
Clerical errors....	74
Costs....	77
Date of order....	77
Delivery of amended pleadings....	77
Disallowance of....	76
General power of....	77
Indorsement on writ....	76
In case of non-compliance with rules....	207
Leave to plead or amend after ..	76
Marking amended pleadings....	77
Misjoinder and non-joinder....	42
Non-joinder and misjoinder..	42
Of parties....	51
statement of claim, when new defendant added ..	43
Order for, need not be drawn up....	158
Pleadings ..	76
Power of court to amend on appeal....	77, 184
Powers of judges to amend Rules....	45
Statement of claim....	43
Time limited for....	77
With leave by court or judge....	77
Without leave....	76
Writ and service....	43
See Pleading....	

ANSWER.

To be direct and full....	59
---------------------------	----

ANSWER TO INTERROGATORIES.

Any one or more used at trial without putting in others....	84
Exceptions to interrogatories not to be taken, but sufficiency to be determined by court ..	81
Form of....	80, 224

ANSWER TO INTERROGATORIES.—Continued.

Further answer ordered either by affidavit or <i>viva voce</i> ..	81
If insufficient further answer may be ordered ..	81
Judge may order other answers at trial than those used ..	84
To be by affidavit ..	80
filed within ten days ..	80
<i>See also</i> Interrogatories ..	

APPEALS.

Annual session of court of appeal at Halifax, and when held ..	186
Appeal cases by whom printed ..	190
Application for new trial, where made ..	114
to be by notice of motion ..	114
“Case,” what the term includes ..	191
Case, by whom printed ..	190
certifying of ..	191
filing of ..	191
Causes from same county to be grouped ..	189
Costs ..	184
Court to be always open at Halifax ..	186
powers of to amend on ..	77, 184
Cross-appeals ..	184
time of, from final judgment and interlocutory order ..	185
Entry of ..	185
form of ..	277
Entries of causes for arguments ..	188
Entering cause, consequence of not doing so ..	190
Evidence, how brought up ..	185
<i>Ex parte</i> applications ..	185
From judge at chambers ..	161
Further evidence ..	184
Inferences, &c ..	184
Interlocutory order, not appealed from, does not bar court ..	185
Interpleader ..	181
Interest to be allowed where execution stayed ..	185
Judge who tried action with jury not to sit on hearing of appeal ..	188
Judgment, where judgment wrongly entered on findings ..	115
Limitation of Rules 1, 2, 3, 4, 5, 6, 9, 10, 11 and 13, of Order LVII. ..	186
Minutes of trial, when unnecessary to file ..	99
New trial may be ordered ..	184
Notice, on whom to be served ..	183
copy of to be left with prothonotary at Halifax ..	185
may be amended at any time ..	183
to be served within ten days ..	183
Part of judgment or order may be appealed from ..	183
Powers of court as to further evidence, inferences, &c ..	184
Printing of ..	190
Rules for the hearing of appeals to be made by court ..	18
Referee, appeal from ..	186
Security or deposit to be made or given ..	185
Stamp on case for ..	191-192
Stay of proceedings ..	114, 186
Subjects of appeal ..	183
Substitution of judge ..	185
Time for appeal ..	183
in <i>ex parte</i> applications ..	185
from finding of facts by judge ..	114
To be by rehearing and after notice of motion ..	183
When findings wrongly entered ..	115
causes and matters for argument entered ..	188

APPEARANCE.

Address for service required ..	30
consequence of not giving ..	31

APPEARANCE.—Continued.

After time expired	31
By landlord in action to recover lands	31
partners	144
person sued under firm name	145
not named as defendant in action to recover lands....	31, 32
several defendants	31, 33
third party brought in by notice	49
as defendant to counter-claim	64
claimants in interpleader	180
County for appearance to be named in memorandum on writ	30
Default of. <i>See</i> Default	32
solicitor in entering after undertaking....	31
Defective, no address, not receivable	31
Defendant appearing in person to give address	30
one or more of several appearing	33
Form of....	31, 213
How entered	31
In actions to recover lands	31, 34
for claim for damages and liquidated demand..	34
mesne profits and damages	34
cases of default not provided for, action to proceed....	36
Limited in action for land....	32
notice to be given	32
form of	32, 214
May be entered any time before judgment	31
Memorandum of appearance to be entered in Cause Book	31
form of....	31, 213
on writ, county for appearance to be named in	30
Notice of, to plaintiff....	30
form of	30, 213
how given	30
of motion to set aside proceedings before	32
One person sued in firm name....	145
Partners, appearance by	144
Place for appearance to be named in memorandum subscribed on writ	30
Set aside where address illusory or fictitious	31
Several defendants in one memo	31
Solicitor appearing to give address	30
not appearing after undertaking, may be attached....	31
Third party, by	49
Time for	31
when writ served out of jurisdiction	29
To originating summons	159
Where entered....	30

APPLICATION TO COURT.

How made..	156
------------	-----

ARBITRATOR AND ARBITRATION.

Award, time for enforcing	124
Compulsory reference to....	95
Costs on award..	199
Form of order of reference....	297
To direct how judgment to be entered....	115
<i>Setting Aside Award</i>	115
Abolition of rules <i>nisi</i>	156
Appeal on question of law in compulsory reference....	186
Notice of motion	156

ARGUMENT.

Sessions for	187
Entering special case for	91

ARGUMENT.—Continued.

PAGE

Appeal, causes and matters for	188-9
consequence of not entering	190
Printing evidence and documents for	190
Quorum of judges for	187
Special session for	187

ARREST OF DEFENDANT BEFORE FINAL JUDGMENT (CAPIAS.)131, 134

Application by defendant for relief	131
Arrest of defendant about to leave the Province	131
form of order for	131, 299
Bond with two sufficient sureties may be given by defendant	132
form of	299
to be returned with order	133
Concurrent orders for arrest	132
Costs of arrest	132
Discharge of defendant if plaintiff does not proceed to trial	133
Forms of order for arrest and of bond	299
Indigent Debtors' Act, relief under	133
Misnomer	133
Security by defendant	132
subject to order of court	132
Sheriff's duty	132
sureties when allowed to render in action upon bond	134
when to justify	133

ARREST OF WITNESS. 102

On refusal of to attend on subpoena	102
Form of warrant for	102, 280

ASSESSMENT OF DAMAGES.

Need not be pleaded to	63
On claim for detention of goods and pecuniary damages	33
Reference to, order of court where matter of calculation	102
To what time damages to be assessed	102
Writ of inquiry as to	101, 284

ASSESSORS.

Allowances to accountants, &c.	204
Court or judge may call in aid of	18
In Chancery chambers	170
Judge sitting with	94
Remuneration of	18
Trials, with	94, 102

ASSIGNMENT.

Debtor may compel interpleader	8
Of choses in action conveys right to sue	7
interest <i>pendente lite</i>	51
securities to surety	8

ATTACHMENT OF DEBTS. See Execution

Affidavit in support of order	129
form of	231
Costs to be in discretion of judge	131
Disputed liability	130
Discharge of garnishee	130
Debt Attachment Book	130
Effect of garnishee order	129
Execution against garnishee	129
Form of Garnishee Order (attaching debt)	305
(absolute)	306

ATTACHMENT OF DEBTS.—Continued.		PAGE
Issue tried if garnishee disputes liability		130
Payment, effect of		130
Proceedings of third party interested in debt		130
Order for		129
forms...3		305-6
Record of attachments		130
Service of order		129
Third persons, order for to appear... ..		130
decision as to		130
ATTACHMENT OF GOODS.		
<i>See</i> Absent or Absconding Debtor and Suits against Foreign Com-		
panies		137-141
ATTACHMENT OF PERSON. <i>See</i> Execution.		
Directors or officers of corporation, against... ..		124
Discovery may be enforced by		84
Effect of attachment		129
Form of writ... ..		280
Leave to issue writ		129
Notice of motion for		156
Rule <i>nisi</i> in application for abolished		156
Referee cannot enforce order by		100
Solicitor undertaking to appear, and not appearing ..		31
neglecting to give notice of order for interrogatories or discovery		84
What judgments enforced by		120, 124
ATTACHMENT OF WAGES..		
		130
ATTENDANCE.		
In Chancery chambers		172, 173
ATTORNEYS.		
Definition of		208
AUDITA QUERELA.		
Abolished, application in lieu of		124
AWARDS.		
Costs on		199
Questions may be referred in certain cases... ..		20
Time for enforcing		123
Who shall be official referees		20
BAIL.		
<i>See</i> Arrest of Defendant before final judgment (<i>capias</i>)		131-134
BANKERS' BOOKS.		
Inspection of, at place of custody... ..		82
Notice to inspect, form of		226
BANKRUPTCY.		
Party to action becoming bankrupt, no abatement... ..		51
Trustee in bankruptcy, joinder of claims by		54
form of claim		222
BILLS OF EXCHANGE.		
Defence in actions on		63
Joinder of parties in actions on		40
Special indorsement in actions on... ..		23
forms of... ..		239-241

BOOKS.

	PAGE
Attachment-Book....	130
Books of account may be <i>prima facie</i> evidence ...	88
Bankers' books, inspection of	82
Cause Book	25
Inspection of books of account	82
See Officers and their Documents	192

BUSINESS.

Applications and proceedings at chambers....	159-162
Chancery or equity chambers....	165-179
Distribution of, and sittings	9-10
Of the prothonotary's office	192-194

CAPIAS.

See Arrest of Defendant before Final Judgment	131
---	-----

CASE.

Stated by referee	100
See Special Case	90-92

"CAUSE."

Definition of	I
---------------------	---

CAUSES.

Distribution of	10
Jury, causes tried first	15, 16
List of jury and non-jury made up....	15, 96
Prothonotary at Halifax to group causes from same counties	188
Ten causes, not more, to be called in one court room	11

CAUSE-BOOK.

Abated cause to be struck out of	53
Entry of actions in.. ..	25
dates in	193

CAUSE OF ACTION.

Amendment of indorsement as to	76
Arising out of the jurisdiction....	28
In actions for land, when may be joined	53
Joinder of causes of action	53-54
Survival of, change or addition of parties on	51-53
failure of party entitled to proceed upon	52

CERTIORARI.

Allowance of, by commissioners	194
Form of writ to County Court ...	285
Form of (general)....	285

CESTUI QUE TRUST.

Judgment for or against, in administration	46
Right of, against trustees not barred by statute of limitations	7

CHAMBERS.

Adjournment for further consideration....	161
into court	161
from court to chambers....	161
Affidavits and evidence in....	112
to be filed	161
Appeal from judge at chambers	161, 183
Applications at, to be by notice or summons	159
for payment and transfer out of Court ..	159
Costs at	201, 202
of neglect to attend....	201

CHAMBERS.—Continued.

PAGE

<i>Ex parte</i> applications....	159
Form of summons other than originating summons..	161, 288
order....	162, 290
summons for directions pursuant to Order XXIX ..	78, 290
order for directions pursuant to Order XXIX ..	78, 291
Further consideration....	179
Judge for....	162
List of summonses	161
Matters not disposed of	161
Matter, more than one included..	161
not to be re-opened ..	160
Orders, drawing up of dispensed with in certain cases....	158
Order of business....	162
Originating summons	159, 162
Persons summoned failing to attend	160
Re-consideration where judge has proceeded <i>ex parte</i>	160
Summons, see service of orders, &c.,	205, 200
alteration of	159
originating....	159, 162
failure to attend on	160
forms	288, 289
for directions in....	78, 295
summary judgment	137
how issued	161
hearing of	162
service of.	161

CHAMBERS IN RELATION TO CHANCERY (OR EQUITY) MATTERS.

Administrations and trusts..	166-170
applications for	167
none unless necessary	169
when no accounts have been rendered ..	169
Advertisements for creditors and claimants..	173-176
for necessary parties	172
form and contents of, (Appendix L, 2 and 3) ..	174, 317, 318
preparation and insertion of	173
Affidavit need not be made by creditor on proof of claim unless notified	174
Applications for administration..	167
Attendance of parties, &c., directions as to..	172
Business at	165
Claims, examination and verification of lists of	174
forms. (No. 5 and 6, Appendix L.)	319
Claims, adjournment of hearing....	175, 319
allowance or disallowance of	175
allowed, list of made and filed	176
notice of those allowed and disputed....	175
form of notice. (Nos. 7 and 8, Appendix L.)..	320, 321
Costs in	170, 172, 174, 176
Deed, settling of	171
Delay, consequence of	170
Directions for proceedings	171
advertisement for necessary parties....	172
to serve others	168
Distribution of assets	166
Documents, discovery and production of	166
Entry of summons..	172
Evidence on application	168
Exclusion of persons not claiming within time specified	173, 175
Expert, assistance of....	170
Form of order on summons to proceed	173
Forms for equity business. Appendix L, Nos. 10-20	322, 334

CHAMBERS IN RELATION TO CHANCERY (OR EQUITY) MATTERS.—Continued.

Further consideration	179
form of summons for	179
Further notices	171, 172
Generally what matters disposed of	166, 167
Guardian <i>ad litem</i>	170
Guardianship of infants	166
Infant, application for guardianship	170
Interest, rate of on legacies, and where debt does not bear	176
Judgment	168
time for bringing in directing accounts	170
List of matters to be taken in	165, 166
Management and sale of property	166
Nature of business to be taken in	165, 166
Notice of judgment, service of dispensed with	171
absent parties bound	171
Notices, service of by post	176
Order, how drawn up	173
Originating summonses in administrations and trusts	159, 160, 162
Originating summons, how prepared and issued	159
forms of	288, 289
Payment or transfer of money	166
Peremptory advertisements	173
Power of executor not prejudiced by application	169
Proceedings on summons to proceed	172
Proceedings relating to infants	170
Proceedings relating to creditors and claimants	173-176
Proof of claim, when required	176
Referees in	177, 178
Representation of party by distinct solicitor	173
Securities, production of on notice	174
Summons-book	172
Summons to proceed	172
Service of originating summons	159, 160
Settlement of deed, procedure on	171
Solicitor, attendance of distinct	173
Special directions	168
Summons requiring attendance of witness—form	317
Summons to proceed	172
Time to plead	166
Trustees may apply for special directions	169
CHANGE OF PARTIES BY DEATH, DEVOLUTION, ASSIGNMENT, &c.	51-53
Abatement	51
Abated cause, striking out	53
Adding parties after final judgment	123
Certificate of abatement	53
Continuance by or against parties	51
Defendant compelling plaintiff to proceed	52
Effect of death, marriage or bankruptcy <i>pendente lite</i>	51
Effect of assignment or devolution <i>pendente lite</i>	51
<i>Ex parte</i> application to add parties	51
No abatement	51
Order to be served on interested parties called on	52
Order on appointment of guardian <i>ad litem</i>	52
Parties becoming interested to have notice	51
Persons under disability, application by	52
Power to add parties	51
Successor in title or estate to be new party	51
Service and effect of order calling on parties interested	52
Varying Order	52

CHEQUE.

Writ may be specially indorsed in action on	23
---	----

CHIEF JUSTICE.	PAGE
To have precedence among the judges	3
Vacancy or absence provided for	208
CHOSES IN ACTION.	
Assignment of	7
conveys right to sue	7
Disputed by assignor or person claiming under him	8
CHRISTMAS DAY.	
Not counted in limited time	194
CIRCUITS AND SITTINGS.	
Duration of circuit sittings	11-14
Extra or summer terms	13
Five circuits in province	11
Halifax sittings	10
Lists of jury and non-jury causes to be made up	15
CLAIM.	
Counter claim	64
Indorsement of claim	22, 23
forms of	216, 222
Joinder of causes of action	53, 54
Precise statement of, not essential	22
Special indorsement of, when may be made	23
form of	216
Statement of	61
To be indorsed on writ	22
Where action is in a representative capacity	23
forms of	222
See Defence and counter-claim	63-65
Parties	39-51
Statement of claim	61, 62
Third party procedure	48-51
Writ of Summons, &c	22
CLERICAL ERRORS.	
Amendment of	77
CLOSE OF PLEADINGS.	
Effect of non-delivery of a reply	75
on time for notice of trial	95
On simple joinder of issue	70
Rules as to	69, 70
CO-DEFENDANT.	
Contribution or indemnity from, rules as to	50
CO-HEIR.	
Party to administration proceedings	45, 46
COMMISSIONERS.	
Affidavits sworn before	110
Allowance of <i>certiorari</i> by	194
Authority to administer oaths,	194
examine witnesses, aged, infirm, &c.	194
Duty on taking affidavits to state time and place of swearing	110
Title of certificate on exhibits	112
See Affidavits and Depositions, &c.	109-112

COMMISSIONS TO EXAMINE WITNESSES.

	PAGE
Application for, on summons for directions..	78
Commissioner's oath, form of.....	287
Depositions, opening	106
setting aside	106
Form of commission	286
Forms of order for	301, 302
Power to order	104
Request in place of	104
forms	303, 304

COMMITTEE OF LUNATIC.

Action may be defended by	43
---------------------------	----

COMMON LAW.

All legal rights to be recognized	6
Equity to prevail in case of conflict	9
General provisions as to administration of law and equity	4-9
Rules of law upon certain points	4-9

COMPANY OR CORPORATION.

Discovery in aid of execution against	127
Enforcement of judgment or order against	124
Execution against shareholders	123
Foreign, suits against	141-143
Interrogatories to	80
Service of writ upon	27

CONCURRENT WRITS OR ORDERS.

Issue of	25
Of capias....	132
Renewal	26
To be issued within twelve months ..	25
Within and without jurisdiction	25

CONDITIONS PRECEDENT.

Averment of, implied in pleading....	58
--------------------------------------	----

CONDUCT OF ACTION.

By parties to administration suits	47
not directed to attend	173

CONFESSION OF DEFENCE.

Form of judgment for plaintiff's costs, after	271
How pleaded	71
form of pleading...	224

CONSENT.

Enlarging time by..	195
For infant, by next friend or guardian ..	44
Issues of fact stated by	91-92
Of person to be added as plaintiff	42
Of new trustee, how proved..	112
To trial by affidavit	113

CONSIDERATION.

See Further Consideration...	179
------------------------------	-----

CONTEMPT OF COURT.

Disobedience to order for attendance of witness is....	104
Referee may not commit for	104

CONTINUANCE.	PAGE
Absence of material witness	97
What affidavit must state	98
CONTRACT.	
Pleading to allegation of	59
Defendant abroad, breach within the jurisdiction	29
Joinders of parties in actions on	39, 40
CONTRIBUTION.	
Notice to person liable to contribute to or indemnify defendant	48
COPIES.	
Certified copies admissible in evidence to the same extent as originals	103
Taking copies on inspection	82
CORPORATIONS.	
Aggregate required to produce documents	86
Who may make affidavit	86
See Company.	
COSTS.	195-204
Accountants	204
Action for	199
Administrator	196
Affidavits, allowance in case of ..	200
in answer to interrogatories	200
Agency correspondence ..	201
Amendment	203
defendants in case of	203
Appearance, unnecessary	202
Attendance, useless	201
Award	199
Copies ..	200, 201
Defendants, one to another ..	204
Delivering documents ..	200
Depriving of, reasons to be given	200
Discretionary ..	195
Distribution, costs in case of	198
Evidence	201
taxed bill conclusive	199
Executor, &c., out of fund	196
Extension of time ..	202
Figures	201
Guardian <i>ad litem</i> , solicitor as	198
Improperly incurred, vexatious, &c.	197, 201, 203
Inferior court, cause from	196
Inquiries as to legacies, &c	198
Inspection of documents	201
Interlocutory ..	199
Jury, on trial with ..	196
Lien, not to affect set-off	198
Mortgagee ..	196
Neglect, &c., of solicitor	196
Notices	199
not required when no appearance ..	199
Perusals	200
Pleadings, copies of	200
separately by same solicitor ..	201
Prothonotary, taxation by	199
to certify bill	199
to give items	199

COSTS.—Continued.

	PAGE
Retaxation ..	204
judge on ..	204
Security for ..	196
amount, &c., of ..	197
bond for ..	197
Set-off ..	202
not affected by lien ..	198
Several issues ..	196
Tariff ..	199, 200
Taxation, when final ..	199
Taxed bill conclusive ..	199
Tender ..	197
Unsuccessful claim, costs of not payable out of estate ..	198
Unprovided cases ..	203

COUNTER-CLAIM.

See Third Party; Pleading; Defence.

Against plaintiff and third parties ..	64
any person connected with subject-matter ..	5
plaintiff ..	5
stranger ..	5
Any right or claim may form counter-claim ..	56
Amendment of ..	76
Appearance to by new party ..	64
form of entry of ..	215
Balance of counter-claim, judgment for ..	65
Counter-claim not stayed by discontinuance, &c ..	65
Defence to contain settlement of, if any ..	56
arising after pleadings may be used ..	70, 71
Effect same as cross-action ..	56
Equitable, may be set up ..	5
Exclusion of counter-claim on application of plaintiff ..	56, 64
Form ..	263
Further defence to matters arising, pending ..	70
Misjoinder of plaintiff ..	40
Payment into court in satisfaction of, by plaintiff ..	68
Plaintiff's reply to be reply to counter-claim ..	56
Reply by party thereto ..	64
to, subject to rules of defence ..	70
Specific statement that defence is by way of counter-claim ..	64
Striking out on leave ..	72
for trial by separate action ..	64
Title of counter-claim when third parties ..	64
Withdrawing on leave ..	72

COUNTY COURTS AND JUDGES.

Order to remove judgment from ..	298, 299
To be official referees ..	20
When judge of may hold sittings ..	15
Writ of certiorari to; form of ..	285

COURTS.

Divorce and matrimonial causes, judge of Supreme Court may be judge of ..	2
Equity court included in supreme court ..	3
One supreme court of judicature for Nova Scotia ..	2
Supreme court, powers of what to include ..	4
Vice Admiralty, judge of supreme court may be judge of ..	2

CREDITORS.

Form of general indorsement by creditor to administer estate ..	216
Rules as to creditors and claimants in chancery chambers ..	173-176

CRIMINAL.

PAGE

Jurisdiction of judges to extend to criminal as well as civil matters	4
Rules not to affect the procedure or practice in criminal proceedings	206

CROSS-APPEALS.

Consequences of omission to give notice.. ..	184
If respondent intends upon hearing of appeal to contend that the decision of court below should be varied, he shall give notice of such intention to all parties affected.. ..	184
Notice of motion by way of cross appeal unnecessary....	184
See Appeal. Notice of Motion on Appeal.	
Evidence in Court of Appeal.	

CROSS-EXAMINATION.

Attendance for, compelled	113
Of deponents on notice	113
form of notice	230
Officer of corporation making affidavit on production of documents liable to.. ..	86
Order for in interlocutory applications	109
Restrictions on irrelevant	98

DAMAGES.

Assessment of damages by writ of inquiry... ..	33
in case of continuing wrong	102
on default of appearance	33-34
pleading....	73
form of writ.. ..	284
Forms of indorsements for	219-222
Judgment in default of appearance after assessment; forms of	268
Need not be pleaded to	63
Reference to officer of court where matter of calculation	102
Witnesses at assessment to be examined <i>viva voce</i> and in open court..	103

DAYS.

See Time.	
Sunday, Christmas Day and Good Friday, not counted in certain cases	194

DATE.

Amended pleadings	77
Concurrent writ	25
Every writ to be dated day of issue ..	22
Pleadings, to be marked with....	58
Of judgment	117, 118

DEATH.

Effect on action.	51, 53
execution ..	122
Not to abate action if cause survive	51

DEBENTURE HOLDER'S ACTION.

Sale in case of	154
-----------------------	-----

DEBTS.

Assignment of, rule of law as to.. ..	7, 8
Attachment-book to be kept by prothonotary	130
Attachment of....	129, 131
Defence in action for	63
Special indorsement	23
Summary procedure in action for....	37, 39

DECEASED PERSONS.	PAGE
Administration of their estates.. . . .	45, 48, 166, 170
DECLARATION STATUTORY.	
"Oath" includes	2
DECLARATORY JUDGMENT.	71
DECREE.	
"Judgment" includes...	2
DEED.	
Equitable relief against	4
Form of claim in action to rectify	217, 237
DEFAULT.	
Appearance at trial.. . . .	97
By not proceeding after death of party	52
Judgment by	75
setting aside	75
DEFAULT OF APPEARANCE.	
Account order for...	39
Affidavit of service	67
By infant or person of unsound mind	32
By third party served with notice	49, 50
Claim for damages and liquidated demand...	34
Damages, inquiry as to	33
Entering judgment on specially indorsed writ	33
In cases not specially provided for	36
Judgment by default in special cases :	
foreclosure.. . . .	35
mesne profits...	34
partition...	35
recovery of land	35
several defendants...	33
specially indorsed writ.. . . .	33
DEFAULT OF PLEADING	
Close of pleadings on default	75
Defence, delivery of :	
actions generally	73
several defendants	73
action to recover land.. . . .	75
with mesne profits	74
assessment of damages	73
claims for goods or pecuniary damages	73
several defendants	73
liquidated demand	73
motion for judgment	75
Reply, delivery of :	
dismissal for want of prosecution.. . . .	95
pleadings deemed closed	75
setting down for trial	95
Setting aside judgment by default	75
Statement of claim, delivery of.. . . .	73
Third parties, default by	49
DEFENCE, STATEMENT OF.	
Abatement, no plea of	65
All grounds of defence to be raised in	58
Balance of counter-claim over claim, judgment for	65
Bills of exchange, promissory notes, or cheques	63

DEFENCE, STATEMENT OF.—Continued.

	PAGE
Costs of improper denial or non-admission	64
Counter-claim	56
exclusion of	64
to stand if claim fails	65
must be specified specially	64
Damages need not be denied	63
Debt or liquidated demand	63
Delivery of	56
time for	63
Forms of defence	254, 263
Form of entry of appearance limiting defence	214
interlocutory judgment	267
judgment for plaintiff's costs after confessing defence ...	271
Not guilty by statute	58, 65
Payment into court	66, 69
Recovery of land	65
setting aside false, &c.	71
Specially indorsed writ	63
Tender pleaded	66
Third parties, defendants to counter-claim	64
appearance of	64
form of indorsement	64, 223
notice of claim by defendant	48
reply by	64
to be summoned	64
Withdrawal of	72
<i>See also</i> Pleading	56, 61
Third Parties	48, 51
Defence and counter-claim	63, 65

DEFENDANT.

What the term includes	208
------------------------------	-----

DELAY.

Matters in any statement which may lead to, may be struck out....	60
---	----

DELIVERY OF PLEADINGS.

Between the parties	57
For use of judge	96

DELIVERY, WRIT OF.

For specific delivery of chattels	146
Form of præcipe for	274
writ	278
What judgments enforced by	119

DEMURRER, PROCEEDINGS IN LIEU OF

DENIAL OF FACTS IN PLEADINGS.

Facts not denied need not be alleged by other party if <i>onus</i> does	
not lie	60
specifically to be taken as admitted	58
except as against infants and lunatics	58
General denial not sufficient	59
Must answer point of substance	59
Not to be evasive	59
Of contract	59
representative character to be specific	63

DEPOSITIONS.

Examination of witnesses on	103-107
abroad	104-106
How taken and signed	105

DEPOSITIONS.—Continued.

	PAGE
In action to perpetuate testimony.....	108
Notice to opposite party of intention to use	107
either party of return of examinations taken abroad	106
Opening examinations of witnesses taken abroad	106
Order for taking evidence by	103, 104
forms of.....	301, 303
Return of	106
Setting aside.....	106
When receivable in evidence	106
See also Affidavits and Depositions	109, III

DETENTION.

Default to claim of.. ..	33
May be ordered	147

DIRECTIONS, (SUMMONS FOR.)..... 78

Form of summons	290
order	291
General summons for....	78
form of.. ..	290

DISCLOSURE AS TO PARTIES, &C.

Parties suing or sued as firm	143
form of order	293
Solicitor's declaration, whether writ by his authority or not..	25

DISCONTINUANCE 72

Counter-claim not stayed by	65
Defendant's costs on	72
Form of notice of discontinuance	229
judgment for defendant's costs on	271
Striking out defence on application of defendant	72
Subsequent action may be stayed if costs of discontinued are not paid	72
Withdrawal of record	72

DISCOVERY.

By interrogatories	79-86
In aid of execution.. ..	127, 128
Of names of partners	143

DISCOVERY AND INSPECTION 79-86

Affidavit in answer to interrogatories	80
form of.. ..	224
reply to order for discovery ..	81
form of	225
Answers to interrogatories to be evidence	84
Attachment of solicitor for neglect to notify client of order for in-	
terrogatories, discovery or inspection.. ..	84
Banker's or trader's books, inspection of	82, 83
copies of may be furnished	83
Corporation, affidavit by officer of	86
Corporations and other bodies, members of may be interrogated	80
Costs of interrogatories, when unreasonable, &c	80
security for	84, 85
Cross-examination of deposing officer, &c., of corporation	86
Disobedience to order for inspection or to answer interrogatories	84
discovery of	81
reply.....	225
form of	225
produced on notice to produce.. ..	82
Exceptions to affidavits in answer	81
Form of interrogatories	80, 224

DISCOVERY AND INSPECTION.—Continued.	PAGE
Former officers of corporation may be examined.. . . .	86
Infants	86
Inspect, notice to	82
form of	226
Inspection, order for	82
form of order to produce documents for inspection	295
objections to	82, 83
disobeying order for inspection	84
Insufficient answers to interrogatories	81
Objections to interrogatories	80
privilege	83
Proviso as to more than one set of interrogatories	79
Solicitor, liable to attachment	84
specific documents	83
Time for answering interrogatories	80
Sheriff, in action against	85
DISMISSAL OF ACTION.	
Form of order dismissing summons (Appx. K., 48)	312
to dismiss for want of prosecution	294
Discontinuance	72
Of action for not giving notice of trial	95
failure to grant discovery	84
where statement of claim not delivered	73
motion when all parties not served	157
Non-appearance of plaintiff	97
Not proceeding after death of party	52
DISTRIBUTION OF BUSINESS.	
To be regulated by Rules of court	9, 10, 20
DIVORCE COURT.	
Judge of supreme court may be judge of	2
Rules not to affect procedure or practice in	206
DOCKET.	
Causes for argument from various counties to be grouped	188
How made up	96
DOCUMENTS, OFFICERS AND.. . . .	192-194
Delivering documents, mode of	57
Discovery, inspection, &c	81, 84
How marked	10, 139
Indexes to be kept by officers of all filed	192
Notice to admit	86
form of	226
Notice to produce	87
form of	228
Printing of documents and evidence to be used at argument	190
<i>See also</i> Service of Orders, &c.. . . .	205-206
EJECTMENT.	
Appearance by party not named as defendant	31-32
Default of appearance or defence as to part	34
Defence of person in possession	65
Other claims not to be joined except mesne profits or arrears of rent or double value	53
Service of writ in case of vacant possession	28
Specially indorsed writ	23
Summary judgment for	37
Writ of possession	146
form of	28

ELECTION PETITIONS.

PAGE

Judges for trial of, how selected.	10
---	----

EMBARRASSING.

Matter in statement may be struck out	60
Order may be made to prevent embarrassment of defendant in action in which he has no interest	40

ENLARGEMENT OF TIME.

By consent..	195
Costs of application for..	202
Court or judge to have general power to enlarge or abridge time	195

ENTRIES FOR ARGUMENT.

Arrangement on docket..	189
Consequences of not entering	190
Cross appeal	188
Grouping	188-9
Form of	277
Inscribing according to precedence of bar....	189
July session	189
Name of judge to be stated..	188
Re-entry not necessary..	189
Time for entering	188
Who may make	189

ENTRY FOR TRIAL.

Either party after notice may enter..	95
Given to prothonotaries on or before the Tuesday preceding the first day of the sittings or term	96
If no entry notice of trial to lapse....	96
Time for, generally	96

ENTRY OF JUDGMENT 117

By consent	118
Date of entry..	117-118
Examination of affidavits and documents by prothonotary.	118
Forms	267-273
How entered	117
Judgment for an act to be done	118
Pursuant to order, certificate or return of writ	118
Referee may direct judgment to be entered	100
Solicitors, consent necessary	118
Satisfaction piece and form of....	119, 273
Wrong on findings..	115

EQUITY.

Assignment of debts and choses in action	7, 8
Business at chambers....	165, 179
Causes, trial of	92
Common law and statutory rights and duties	6
Counter-claims and third parties	5
Court and judge included in Supreme Court	2
Custody of infants	9
Defendants' equities	5
Equities appearing incidentally	6
Equity of redemption in goods may be seized	124
Final determination of all matters in controversy	7
Law and equity to be administered concurrently	4-9
Mandamus, injunctions, and receivers	9
Merger..	7
Plaintiffs' equities...	2

EVIDENCE.—Continued.

	PAGE
Referee, evidence before	100
Rules as to affidavits	109-113
subpoena	108
Service of subpoena	108
Slander and libel, in mitigation of damages	98
Solicitor's name on præcipe for subpoena	108
Subpoena for chambers	108
Taking before examiner	103-107
Trial not necessary in action to perpetuate testimony	109
Writ of inquiry	101
subpoena, forms of	283-284
when to be served	108
<i>See also</i> Affidavits and Depositions, &c	109-113
Discovery and Inspection	79-86

EXAMINATION OF WITNESSES.

About to leave the province, infirm, &c.	103
Notice in case of	104
Administering oath by examiner	107
Affidavits at trial may be used subsequently	107
Conduct of examination	105
money	104
Copy of order, pleadings or documents for examiner	105
Depositions taken down in writing	105
only to be used at trial in certain cases	106
opening	106
setting aside	106
Evidence after trial, how taken	107
Examination, rules as to, applicable	107
of debtors for garnishee purposes	129
Notice before use of depositions	17
Objections to questions	105
Order for examination before officer of court	104
Refusal of witnesses	105
costs of refusal	106
Special directions may be given	107
report by examiner	106
<i>Subpoena ad test, or duces</i>	108
Forms of orders:	
appointment of special examiner abroad	304
for commission to examine witness	304
examination of judgment debtor	305
witnesses before trial	301

EXECUTION.

After judgment on contingency	120
Against shareholder of joint-stock company or officer of	123
Application necessary in certain cases before issue of	122
for relief instead of <i>audita querela</i>	124
Articles exempted from levy	126
Assets <i>in futuro</i>	123
<i>Audita querela</i> , application for relief instead of	124
Award, time for enforcing	124
Bank notes, &c., may be taken under	125
Bond of indemnity to sheriff	126
Coin, &c., may be taken	125
Corporation, execution against	124
Costs of executing act required to be done	123-124
Custody, discharge of defendant from	127
Date and form of	121
Debt and costs, separate writs for	122
Demand not necessary	119
Discharge of defendant from custody	127

EXECUTION.—Continued.

PAGE

Duration and renewal of	122
Effect of service of judgment or order	119
Enforcing judgment against firm	144
for costs	121
land	119
other property	119-120
payment into court	119
recovery of money	119
to do or not to do an act	120
order of court or judge	123
Equity of redemption in goods may be taken	124
Exemptions from levy	126
Firm, judgment against	144
Form of præcipe for execution	120, 273
Forms of writ of execution	121, 281
Goods, &c., when bound by writ	124, 125, 126, 127
Husband and wife	123
How soon it may issue	121
Indemnity to sheriff	126
Indorsement of directions to sheriff	121
name of solicitor or party suing in person	121
“Issuing execution against any party,” meaning of term	120
Judgment or order upon condition	119
on contingency	120
Land, recovery of	119
Levy for fees, poundage and expenses	121
Mandatory judgment, enforcing of	123
Non-performance of condition on which judgment obtained	119
Officer to see judgment before issuing execution	120
Order of writs	123
Other than for money or lands	119-120
modes of enforcement remain	123
Party suing in person, indorsement of name of	121
Præcipe for execution and form of	120, 273
Redemption, equity of, in goods may be seized	124
Renewal	122
evidence of	122
Return of writ	126
Rights to enforce heretofore existing	123
Securities, transfer and effect of	125
Separate writs for debts and costs	122
Sheriff, bond of indemnity to	126
indorsement of directions to	121
to pay over money recovered	125
return to be made by with writ	126
Stay of	122
Surplus to be paid to defendant	125
Terms “writ of execution;” “issuing execution against any party,” meaning of	120
Third party, enforcing judgment by or against	123
Transfer of securities, effect of	125
What “writ of execution” is to include	120
When execution to issue on judgment for other than for money or land, goods bound by writ	124, 127
Within six years	122
after or change of parties	122-123
Writ, when to bind goods	124-127
“Writ of Execution,” what term includes	120
<i>Discovery in aid of</i>	127-128
Against agent of absent debtor	139
Compelling attendance and production	127
Costs of witnesses under order to produce documents, &c	128

EXECUTION.—Continued.

	PAGE
Examination of judgment debtor	127-128
For interlocutory costs.....	199
Order for execution against garnishee	129
Other than for money.....	127
Production of books and documents.	127
Security to be given on issue of execution against absent or absconding debtor	141
<i>Writs of Execution</i>	128
Attachment (person)	129
(debts).....	129-131
Delivery (chattels)	146
For costs	122
Garnishee orders.....	129
Goods of absent or absconding debtor.....	137, 143
Possession (lands)	146
Preceding the coming into force of these rules	128
Replevin.....	134-136
Sequestration and subpoena	128
<i>Venditioni exponas</i>	128

EXECUTION OF TRUSTS.

Form of general indorsement for	217
---------------------------------------	-----

EXECUTORS.

Character must be denied specifically.....	63
Control of in administration suits.....	169
Joinder of personal claims with claims as	54
Representative character to be shown on writ	23
form of	222
Statement of claim by or against, forms of.....	233-234
Suing or sued on behalf of estate	41
When entitled to judgment in administration action..	46

EXISTING.

Meaning of term "existing"	2
Procedure and practice existing to remain	18
where no provision is made by Act or Rules	208
Provision as to exercise of jurisdiction ..	3
Saving of rights and obligations of existing judges...	4

EXPENSE.

Court may prevent defendant being put to, in action in which he has no interest	40
Expenses may be levied with execution	121
Of producing deponent for cross-examination not to be demanded in first instance.....	113

EXPERIMENTS.

May be tried for inspection of property under order of Court.	148
--	-----

EXPERTS.

Assistance of at Chambers	170
---------------------------------	-----

EXPRESS TRUSTS.

Statute of limitations inapplicable to	7
--	---

FACTS.

Notice to admit	86
Party to prove facts sufficient in point of law	16
<i>See, also, Admissions</i>	86, 87
Evidence.....	103-109
Trial.....	92-103

FEES.	PAGE
Costs of proceedings to be regulated by rules of Supreme Court	19
Of counsel, allowance in taxation	204
Pauper not liable to any court fee	45
FILING.	
Affidavit or other proof used in cause must be filed	111
Depositions	106
Enlargement of time for, by consent	195
Filed papers not to be taken away	193
Order for, need not be drawn up	158
Pleadings, &c., when judgment entered	117
Prothonotary to file copy of writ of summons	25
What includes	60
Writ of summons, copy to file left with officer	25
FINAL ORDER.	
Notice of appeal to be served within ten days	183
What may be appealed from	183
FINDING.	
Of judge to be written	88
FIRM. (<i>See Partners.</i>)	143
FORECLOSURE.	
Adjoining counties, property in	155
Assignment of property and delivery of documents	155
As to subsequent encumbrancers	155
Evidence	35
Form of statement of claim in action for	234
defence	255-256
Joinder	51-52
Notice in certain cases	35-36
On what evidence entitled to judgment	35-36
Parties	41
Practice previous to first day of October, 1884, continued	35
Sale	155
Suits for recovery of land, rent, &c., by mortgagors	7
FOREIGN COMPANIES, SUITS AGAINST.	
Agent, examination after judgment	142
Goods in hands of agent liable for amount of judgment	142
How sued when doing business by agents	141
Other provisions not abrogated	143
Proceedings where no agent	142
Provisions of Order XLVI to apply in certain cases	142
Security before judgment, how plaintiff may obtain	142
Time allowed agent to communicate with the constituents	142
<i>See also</i> Suits against Absent or Absconding Debtors	137-141
FOREIGN COUNTRY.	
Action against defendant in	28
Notice of writ and not the writ itself to be served in	30
Time for appearance of defendant in	29
FOREIGN JUDGMENT.	
Defence to original action available	109
FORMS.	
Appearance	Appendix A., Part II. 213-216
Claims	Appendix C. 232-253

FORMS.—Continued.

	PAGE
Defences	Appendix D..... 255-263
Equity Business.....	Appendix L..... 317-335
Indorsements	Appendix A., Part III... 216-222
Judgments	Appendix F..... 267-273
Notices, &c.....	Appendix B..... 222-232
Orders	Appendix K..... 288-317
Payment into and out of Court	Appendix M..... 336
Præcipes	Appendix G..... 273-278
Subpœna, Mandamus, Commissions.....	Appendix J..... 283-288
Reply.....	Appendix E..... 264-267
Writ of Summons.....	Appendix A., Part I.... 209-213
Writs.....	Appendix H..... 278-282
<i>Appendix A.</i>	
Part I.—Forms of Writ of Summons, &c.....	209-213
Form of Memorandum for Renewal Writ, (No. 6.)...	213
General Form of Writ of Summons, (No. 1.)	209
Notice of Writ in lieu of Service out of Jurisdiction, (No. 5.)	212-213
Specialty indorsed writ for service out of jurisdiction (No. 4)	211-212
under Ord. III., Rule 5, (No. 2.)...	210-211
Writ for Service out of the Jurisdiction, or where Notice in lieu of Service is to be given out of the Juris- diction (No. 3)	211
Part II.—Forms of Entry of Appearance	213-216
Affidavit for Entry of Appearance as Guardian (No. 8)	216
Entry of appearance limiting Defence (No. 4).....	214
Order XVI., Rule 50 (No. 5).....	215
Order XVII., Rule 5 (No. 6.)	215
to Counter claim (No. 7.)	215
Memorandum of Appearance in General (No. 1)	213
Notice of Entry of Appearance (No. 2)	213, 214
Notice limiting Defence (No. 3)	214
Part III.—General Indorsements on Writs of Summons ...	216-222
Damages and other Claims (Section IV.)	219-222
Indorsement for Costs (Section III)	219
Indorsements of Character of Parties (Section V)	222
In matters of an Equitable Nature (Section I.)	216, 217
Money Claims where no special Indorsements under Order III., Rule 5 (Section II.)	217-219
<i>Appendix B.—Notices, &c ..</i>	
Acceptance of Sum paid into Court (No. 4.)	224
Admission of Facts pursuant to Notice (No. 13.)	227, 228
Affidavit as to Documents (No. 8.)	225
in support of Garnishee Order (No. 23)	231
of Service of Summons (No. 22)	230, 231
on Interpleader (No. 24)	231
Answer to Interrogatories (No. 7)	224
Confession of Defence (No. 5)	224
Interrogatories (No. 6)	224
answer to (No. 7)	224
Issue (No. 15)	228
Notice of Counter-claim (No. 2)	223
Cross-examination of Deponents at trial (No. 20) ..	230
Discontinuance (No. 19)	229
Motion (No. 18)	229
Payment into Court (No. 3)	223
Renewal of Writ of Execution (No. 21)	230
Trial (No. 16)	228
without pleadings (No. 16 A)	229
to admit Documents (No. 11)	226, 227
Facts (No. 12)	227

FORMS—*Appendix B.*—Continued.

PAGE

Notice to inspect Documents (No. 10)	226
Produce (General Form) (No. 14)	228
produce Documents (No. 9)	225
Third Party Notice (No. 1)	222, 223
<i>Appendix C.—Forms of Statements of Claim to be used pursuant to Order XIX, Rule 5)</i>	<i>232-253</i>
Actions claiming Injunctions, Damages or Declarations of Right founded on Wrongs (Section V)	247-252
for Damages for Breach of Contract or Duty arising out of Contract (Section IV) ..	243-247
Recovery of Land (Section VI)	253
included in Order III, Rule 5, Classes A., B., C., D., E. and F. (Section III)	239-243
of an Equitable Nature (Section II)	233-239
General Form (Section I)	232-233
<i>Appendix D.—Forms of Defence to be used pursuant to Order XIX, Rule 5</i>	<i>254-263</i>
Counter-claims (Section VII)	263
General Form (Section I)	254
To Actions claiming Injunctions, Damages or Declarations of Right founded upon Wrongs. Appendix (C), (Section V) ..	261-263
for Damages for Breach of Contract or Duty. Appendix (C), (Section IV)	260-261
Recovery of Land. Appendix (C) ..	
(Section VI)	263
included in Order III, Rule 5, Classes A., B., C., D., E. and F. (Section III)	257-260
General Defences	259-260
of an Equitable Nature. Appendix (C), (Section II)	255-257
<i>Appendix E.—Forms of Reply, &c., to be used pursuant to Order XIX, Rule 5</i>	<i>264-267</i>
Defence including an Objection in point of law, (Section III)	266-267
Example of a Statement of Claim, Defence and Reply, (Sec. II)	264-266
General Form, (Section I)	264
<i>Appendix F.—Forms of Judgment</i>	<i>267-273</i>
After trial with a Jury (No. 7)	269
by Court without Jury (No. 11)	270
before Referee (No. 8)	269-270
of Questions of Account before Referee (No. 9)	270
Assessment of damages by Referee (No. 4A)	268
By Default after Assessment of Damages (No. 4)	268
in case of Liquidated Demand (No. 1)	267
For Costs after Acceptance of Money paid into Court (No. 15)	272
Defendant's Costs on Discontinuance (No. 13)	271
Plaintiff's Costs after Confession of Defence (No. 14)	271
Of Dismissal (No. 11A)	270
Interlocutory Judgment in Default of Appearance or Defence where Demand Unliquidated, (No. 2)	267
In Default of Appearance in Action for Recovery of Land, (No. 3)	268
Pursuance of Order, (No. 12)	271
Judgment after Appearance and Order under Order XIV, Rule 1, (No. 5)	268-269
at Trial by Judge without a Jury, (No. 6)	269
On motion after Trial of Issue, (No. 17)	272-273
Upon Motion for Judgment, (No. 10)	270
Where no Judgment entered at Trial by Jury, (No. 16)	272
Satisfaction Piece, (No. 18)	273
<i>Appendix G.—Forms of Præcipe</i>	<i>273-278</i>
Amended Summons, (No. 14)	276

FORMS—*Appendix G.*—Continued.

	PAGE
<i>Certiorari</i> , (No. 8)	274
Commission of Partition, (No. 13)	276
to Examine Witnesses, (No. 12)	275
Entry for argument generally, (No. 19)	277
of Action for Trial, (No. 17)	277
Appeal, (No. 18)	277
Special Case, (No. 20)	277
Execution, (No. 1)	273
<i>Habeas Corpus ad Testificandum</i> , (No. 11) ..	275
Inquiry, (No. 7)	274
Memorandum of Service of Notice of Judgment, (No. 21)	278
Notice of Judgment, (No. 22)	278
Prohibition, (No. 9)	275
Renewed Summons, (No. 15)	276
Subpoena, (No. 16)	276
Summons, Amended, (No. 14)	276
Renewed, (No. 15)	276
Writ of Attachment, (No. 5)	274
Delivery (No. 4)	274
Possession (No. 3)	274
Sequestration (No. 2)	273
<i>Appendix H.—Forms of Writs</i>	278–282
(Absconding Debtor), Summons for Agent (No. 10)	282
Writ of Attachment (No. 9)	282
Summons for Agent (Absconding Debtor), (No. 10)	282
Warrant to Arrest Witness (No. 6)	280, 281
Writ of Attachment (Absconding Debtor) (No. 9)	282
(Person) (No. 3)	280
Delivery (Nos. 1 & 2)	278, 279
Execution (as heretofore known) (No. 7)	281
on Order for Costs	281
Possession (No. 8)	282
Sequestration (No. 4)	280
<i>Appendix J.—Forms of Subpoena, &c.</i>	283–288
<i>Certiorari</i> (General) (No. 8)	285
to County Court (No. 7)	285
Commission to examine Witnesses (No. 11)	286–288
<i>Habeas Corpus ad Testificandum</i> (No. 2)	283
Prohibition (No. 9)	285
Subpoena ad Testificandum (General Form) (No. 1) ..	283
at Sittings or Term (No. 4)	284
Duces Tecum (General Form) (No. 3)	283
at Sittings or Term (No. 5)	284
Writ of Inquiry for Assessment of Damages (No. 6) ..	284
<i>Appendix K.—Forms of Summonses and Orders</i>	288–317
Affidavit for Replevin (No. 50)	313
Bond for Replevin (No. 51)	313
to obtain Return of Property Replevied (No. 52) ..	313
on defendant's arrest (No. 28, A) ..	299
Garnishee Order (Attaching Debt) (No. 36) ..	305, 306
(Absolute) (No. 37)	306
for issue between creditor and garnishee (No. 37A) ..	306
Interpleader Order, No. 1. (No. 41)	308, 309
No. 1, A.	309
2. (No. 42)	309
3. (No. 43)	310
4. (No. 44)	310, 311
5. (No. 45)	311
6. (No. 46)	311
7. (No. 47)	312
Order (General Form), (No. 2)	290
Dismissing Summons (Generally) (No. 48)	312

FORMS—*Appendix K.*—Continued.

	PAGE
Order for Affidavit as to Documents (No. 17)	295
Arrest (<i>Capias</i>), (No. 28)	299
Bond on Defendant's Arrest.	299, 300
Delivery of Interrogatories (No. 16).....	295
Directions pursuant to Order XXIX, (No. 4)	291
Examination Touching Means..	314
of Witnesses before Trial (No. 32)....	301
of Judgment Debtor (No. 35)	305
Issue of Notice claiming Contribution (No. 23)	297
Particulars (Accident Case), (No. 13)	294
(General), (No. 12)	293
Counter Claim No. 12, A....	294
(Partnerships), (No. 11)	293
Production (Underwriters), (No. 19)	295-296
Renewal of Writ (No. 22).....	297
Service out of Jurisdiction (No. 20)	296
Special examiner to take evidence abroad, (No. 34) C.	304
Order Substituted Service (No. 21)	297
Time (No. 5)	291
of Reference (No. 24)	297, 298
for inquiry and report under Arbitration Act,	
(No. 29)	300
for trial under Arbitration Act (No. 30)	300
to Master (No. 31)	301
on Client's Application to tax Solicitor's Bill of Costs (No. 38)	307
Solicitor's Application to tax Bill of Costs (No. 39)	307, 308
to amend (No. 10.)	293
discharge or vary on Application by Third Party (No. 14)	294
dismiss for want of Prosecution (No. 15)	294
Produce Documents for Inspection (No. 18).....	295
Replevy (No. 49)	312
Remove Judgment from County Court (No. 27)	298, 299
Tax after Action brought (No. 40)	308
under Order XIV., No. 1	291
2... ..	292
3	292
4... ..	292
Long Order for Commission to Examine Witnesses (No. 34)...	302, 303
Short Order for Issue of Commission to Examine Witnesses	
(No. 33).....	301
Order for request for Commission, (No. 34, A)	303
Request, No. 34, B	304
Replevin, Affidavit for (No. 50)	313
Bond for (51).....	313
to obtain Return of the Property (No. 52)	313
Summons (General Form), (No. 1)	288
for Directions under Order XXIX No. 3).....	290
Originating summons, (General Form) (No. 1, A).	288
not <i>inter partes</i> , (No. 1, B)	289
notice of appointment to hear (No. 1, C)	289
<i>Appendix L.—Equity or Chancery Business</i>	317-335
Account of Personal Estate (No. 11)	325
Rents and Profits (No. 12)	326
Advertisement for Claimants not being Creditors (No. 2) ..	317, 318
Creditors (No. 3).....	318
Affidavit of Executor or Administrator as to claim of creditors	
(No. 5)	319
Affidavit of Result of Sale (No. 15)	330-331
verifying Accounts, &c.	322-324
schedules therein referred to	324
verifying Receiver's Report (No. 20)....	334
Certificate (No. 9)	321-322

FORMS—*Appendix L*.—Continued.

	PAGE
Exhibit referred to in Affidavit No. 5 (No. 6)	319-320
List of Appointments amongst Creditors or Legatees (No. 18)	333
Debts allowed (No. 16)	332
Legacies remaining unpaid (No. 17)	332
Notice to Creditor of Allowance of Claim (No. 7)	320
to produce Documents (No. 4)	318
prove Claim (No. 8)	321
Order for Accounts and Inquiries (No. 24)	334-335
Ordinary Conditions of Sale (No. 14)	330
Receiver's Account (No. 13)	327-329
Recognition (No. 19)	333-334
Summons (No. 1)	317
<i>Appendix M.—Payment Into and Out of Court</i>	336
Accountant General, Duties of	336
Prothonotary, Duties of	336

FRAUD.

Forms of statement of claim	251
How pleaded	59
Pleadings, forms of defence	251, 255, 257, 258
Particulars	57

FRAUDS, STATUTE OF.

Must be pleaded	59
Pleadings, forms of	257, 258

FURTHER CONSIDERATION.

At chancery chambers	179
In insolvent and intestate estates	166
On report of referee	101

GARNISHEE.

Costs, discretionary	131
Debt attachment book	130
Discharge of garnishee	130
Effect of garnishee order	129
Examination of debtor as to debts	129
Form of affidavit in support of order	231
order attaching debt	305
absolute	306
Issue if garnishee disputes liability	130
No costs if amount attached does not exceed thirty dollars	131
order for trial of	306
Not appearing on summons	129
Order to attach debts	129
for execution against	129
third party	130
Service of order, effect of	129
Third party interested, proceedings	130, 131
What debts may be attached	129, 130
See Attachment of Debts	129-131

GAZETTE, ROYAL.

Rules of court to come into force with this chapter	19
---	----

GENERAL ISSUE BY STATUTE.

How pleaded	65
Plea of not guilty	58

GENERAL RULES.

Existing practice in absence of other provisions	208
In absence of Chief Justice senior judge substituted	208
Repealed rule not revived unless expressly	208

GOOD FRIDAY.	PAGE
Not to be counted in computation of limited time....	194
GUARANTY.	
For payment of money, writ may be specially indorsed ..	23
Form of pleading in action for	242
GUARDIAN.	
Accounts of, how passed	151
Application for guardianship of infants to be made at chancery chambers	166
Costs of solicitor appointed guardian <i>ad litem</i> of infants or lunatics	198
Form of affidavit for entry of appearance as	216
To infants and lunatics	43-44
HALIFAX SITTINGS.	
Civil and criminal	10-11
HABEAS CORPUS AD TESTIFICANDUM.	
Form of writ	283
New writ on adjournment of trial	98
HEIR-AT-LAW.	
As party to administration of trusts	45, 168
When unnecessary as party	48
See Parties ..	39-51
HOLIDAYS.	
Reckoning time with regard to ..	194
Vacation in Halifax	186
See Sessions,ittings, Vacations, &c....	186-192
HUSBAND AND WIFE.	
Action by or against wife	43
Execution against husband	122
Joining claim by or against, with separate claims	54
Marriage of party to action	51
Service in action against	27
See Change of Parties by Death, &c.	51-53
Joinder of Causes of Action	53-54
IDIOTS.	
How may sue and defend	43-44
Plaintiff to apply for guardianship of, in default of appearance	32
Service on	27
IMPROPER FORMS.	
Costs of	22
INDEXES.	
See Officers and their Documents	192-194
INDORSEMENT OF ADDRESS.	
Plaintiff suing in person	24
Solicitor and plaintiff ..	24
When no writ issued	24
INDORSEMENT OF CLAIM ON WRIT ...	
Forms of, Appendix A, Part III	216-222
Account to be taken, special claim for ..	23
Amendment by Plaintiff without leave	76
on severance of causes of action	54

INDORSEMENT OF CLAIM ON WRIT.—Continued.

	PAGE
Amount demanded for debt and costs in money claims	23
Claim need not be stated with precision	22
Damages and other claims, forms of	219-222
Debt or liquidated demand, special for	24
Forms of indorsement in Appendix C, Section III	239-243
A, Part III	216, 217
administration actions	216
cancellation or rectification of deed	217
character of parties	222
costs, for	219
money claims where no special indorsements	217-219
partnerships	216
portions, raising of	217
rectification of deed	217
special indorsements	239-243
specific performance	217
trusts, execution of	217
In matters of an equitable nature	216-217
Made on writ of summons before issue	22
Precise statement of ground of complaint, or remedy or relief not essential	22
Representative character of both plaintiff and defendant to be shown	23
Special indorsement for account	24, 39
debt or liquidated demand in money	23

INDORSEMENT OF SERVICE.

Date of receipt of writ of summons to be indorsed immediately on receiving. Service, within three days after service	28
--	----

INDORSEMENT ON WRIT OF EXECUTION.

With directions to sheriff	121
----------------------------------	-----

INFANTS.

Affidavit for appointment of guardian	43, 44
for appearance by, form of	216
Admissions in pleading by	58
Appearance by, in action	43
to petition or summons	44
Authority from next friend to be filed	44
Consents to procedure on behalf of	44
Default of appearance by	32
Estates of	152-154
Guardian <i>ad litem</i> for	32
Investment of money recovered by	68, 69
May sue by next friend and defend by guardian	43
Party to special case	91
Proceedings relating to, in chancery chambers	166, 170
Questions as to custody and education, Equity Rules to prevail	9
Service of notice of judgment or order on	48
order on change of parties	52
writ on	27

INFORMATION.

Actions and suits formerly commenced by, how instituted	21
---	----

INJUNCTION.

Amendment of law, as to	9
Before, at' or after judgment.	149
Cause in Supreme Court not to be restrained	6
Early trial	147
Enforcement of mandatory judgment	123

INJUNCTION.—Continued.		PAGE
Indorsement of claim on writ.	22	
form of	221	
Practice on applying for interlocutory injunction	148	
Stay of proceedings in lieu of injunction	6	
Writ of, abolished, and substitution of order.	149	
<i>See</i> Interlocutory Orders as to Mandamus, &c.	147-149	
INQUIRY.		
May be directed at any stage of proceedings..	88	
Reference to referee for.	102, 177	
<i>Writ of Inquiry.</i>		
Application of certain rules	101	
Inquiry of damages before officer of court or other person	102	
Form of præcipe for... ..	274	
writ of... ..	284	
INQUIRIES AND ACCOUNTS	88-90	
Allowances without directions... ..	89	
Directions as to taking	88-90	
Expedition ordered	89	
Form of ordering account and inquiries	334	
Notice of claim beyond admission	89	
Numbering of accounts	89	
Order for, at any stage ..	88	
Proceedings in chancery chambers ..	173-176	
Personal estate, inquiries	89	
Substituted referee..	90	
Verification of account..	89	
<i>See</i> Chambers, in relation to Chancery Matters	165-179	
INSOLVENCY.		
No abatement on	51	
INSPECTION.		
Banker's and trade books....	82	
By judge and by jury....	148	
Documents, inspection of....	81-85	
form of order for	295	
Order for....	147	
<i>See</i> Discovery and Inspection....	79-86	
INTEREST.		
Allowance of on appeal	185	
Execution for, generally	121	
Special indorsement containing claim for....	23	
With writ of delivery ..	147	
<i>Chancery Chambers.</i>		
Legacies	176	
Rate	176	
Where debt does not bear....	176	
INTERIM ORDERS.		
As to subject-matter of litigation and as to payment of amount in		
dispute into court ..	147	
detention, preservation and inspection of property	147	
Order for sale of perishable goods	147	
INTERLOCUTORY JUDGMENT.		
Default of appearance	33	
by some defendants	33-34	
delivery of defence	73	
Form....	267	

INTERLOCUTORY ORDERS.

	PAGE
Application, how made ..	147
Evidence to support may be by affidavit ..	109
Injunction or mandamus by ..	9, 147
Inspection of subject matter, samples, &c....	147
Notice of appeal from ..	184, 185
Not to prejudice appeal ..	185
Payment into court to satisfy lien ..	148, 149
Preservation of property ..	147-149
Receiver by ..	9, 150-151
Sale of perishable goods ..	147
View by judge and by jury ..	148

INTERPLEADER.

Adverse titles ..	180
Affidavit by applicant....	180
form of ..	231
Application of rules ..	181
Claimant not appearing to be barred ..	181
Costs, discretionary ..	182
Decision, when final ..	181
Form of issue....	228
Forms ..	308-312
Generally ..	179
Issue ordered ..	180
One order in several matters ..	182
Process of Court, claim in case of goods seized under ..	182
Question of law ..	181
Sale when sheriff has seized ..	182
Sheriff's interpleader....	179
Special cases ..	181
Stay of proceedings ..	180
Summons calling on claimants to interplead ..	180
Summary adjudication by consent ..	181
Time to apply if defendant ..	180

INTERPRETATION.

Of terms in Judicature Act ..	I
Rules of Court ..	207
"Writ of execution" and "issuing execution against any party" ..	120

INTERROGATORIES. 79-81

Affidavit by officer, &c., of corporation...	86
in answer ..	80
form of ..	224
order for further....	81
order for <i>vivi voce</i> answer ..	81
reading at trial ..	84
sufficiency, how determined ..	81
time for filing ..	80
use of part of affidavit at trial... ..	84
by sheriff's officer ..	85
Application for.. ..	79
Attachment in default of answer ..	84
Corporation, order on officer of.. ..	80
former officer ..	80
Costs of improper ..	80
secured by deposit ..	85
allowed only when interrogatories reasonable ..	84
Cross-examination of deponent when officer of corporation....	86
Defence struck out on default of answer ..	74
Delivery of by plaintiff or defendant ..	79
Deposit before delivery ..	85

INTERROGATORIES.—Continued.

	PAGE
Dismissal of action on default of answer	84
Disobedience to order to answer	84
Enforcing answer	81
Form of interrogatories	80, 224
answer to	224
Further answer by affidavit or <i>viva voce</i>	81
Irrelevancy	79, 80
Leave to interrogate	79
Note at foot of	79
Objections to answer	80
not answering, action dismissed	84
Scandalous, objections to answer on grounds that they are	80
Solicitor neglecting to give notice of	84
Submitted to court	79
Trial, use of interrogatories at	84
Unreasonably, &c., exhibited, costs of	80
See Evidence	103-109

INTERVENER.

In action for land	31
See also Third Party	48-51

INVESTMENT.

Application as to, in chancery chambers	166
In what securities money under control of court to be invested	68-69

IRREGULARITY.

Application to set aside for	207
Costs	207
Effect of non-compliance with rules	207
Fresh steps taken after knowledge of	207
In affidavits	111
See Amendment	76-79

ISSUE.

Non-delivery of reply as joinder of	75
joinder of	70
Interpleader	180
Joinder of	59, 70
Legal and equitable, how tried	4, 17
Pleadings subsequent to joinder of	69
See Reply and Subsequent Pleadings	69

ISSUES, INQUIRIES, AND ACCOUNTS

..	88-90
Accounts, how taken	88, 89
All just allowances to be made	89
Defendant requiring issues to be tried by jury	16
Evidence	89
Expediting accounts or inquiries	89
Garnishee proceedings	129, 130
Issues to be settled if necessary	88
Judge to write out findings on	88
Judgment or order made directing accounts taken or inquiries made	89
form of	334
Judge may direct jury to answer questions of fact	17
Notice of claim beyond admission	89
Outstanding estate to be inquired of	89
Plaintiff desiring issues to be tried by jury	16
Referee, when new may be appointed	90
Substituted referee	90
Special jury, trial of issues by	94
Trial of, before discovery or inspection	83, 84

ISSUES, INQUIRIES AND ACCOUNTS.—Continued.	PAGE
Verification of account by affidavit	89
Vouchers.....	89
When inquiries or accounts may be made or taken	88
See Special Case	90-91
Trial	92-95
ISSUES OF FACT WITHOUT PLEADINGS.	
Effect of judgment	92
Formal pleadings may be dispensed with.....	91
Judgment according to agreement	92
Order for payment on finding of issue	92
Questions stated for trial in an issue	91
form of	228
JOINDER OF CAUSES OF ACTION.	
Administrator ..	54
Amendments, consequential, may be made ..	54
Bankruptcy trustee	54
Causes may be joined	53
severance if necessary	53
application to sever	54
Costs on severance	54
Executor ..	54
Foreclosure or redemption	51-52
Husband and wife ..	54
Joint and several	54
Recovery of land....	53
JOINDER OF ISSUE,	
Close of pleadings ..	69
Effect of non-delivery of reply ..	75
How and when joined	59, 69
Pleadings subsequent to	69
JOINDER OF PARTIES.	
Amendment by substituting and adding parties	43
Claims by and against persons in alternative	39
Joinder of two defendants in case of doubt ..	40
Parties to joint or several contracts	39
See Parties.. ..	39-51
JUDGE (SINGLE).	
Appeal from decision at chambers	161
Applications to in chambers, how made	159
Business to be disposed of by single	10
May deliver judgment of court or any other judge when authorized to do so	188
direct trial by jury ..	94
call experts in chancery chambers	170
reserve case	10
final decision not more than sixty days ..	17
write out findings ..	88
Power to inspect subject of litigation	148
enter judgment	98
order administration without action in chancery chambers ..	166
Restricting cross-examination ..	98
Rule, order or decision, on notice may be discharged or set aside by court....	189
To constitute a court in certain cases	10
decide all questions coming before him ...	10
Trial of any question or issue of fact before	94, 95
Trustees, &c., may apply to, for directions ..	169
When cause to be tried before....	16
See Chancery chambers	165-199

JUDGES.	PAGE
Aid of assessors, may be called in	18
Chief Justice to have precedence	3
Circuits, summer, judges presiding at to preside at spring circuits	14
Distribution of business among	9, 10
Election petition, trial of, how selected for	10
Existing <i>status</i> not to be affected	4
General powers to make rules relating to appeals, &c., pleadings, practice and procedure, and sittings	18
How appointed	2
Jury may be directed by to give special verdict	17
answer questions of fact in certain cases	17
Jurisdiction when acting in pursuance of statute, common law or otherwise	4
Not to sit on the hearing of any motion for a new trial in cause or matter tried with a jury before self	188
Oath, form of	3
how administered	3
Power to annul, or alter or amend rules	18
sit and act for transaction of business	9
Precedence of	3
Provisions for former extraordinary duties of judges	4
Qualification of	2
Saving of rights and obligations of judges at the time of passing of Act	4
To have equal power, authority and jurisdiction	3
What offices may hold	2

JUDGMENT.

Admissions of fact in pleadings, judgment on	87
Affidavit, necessary for prothonotary to examine	118
After trial	98
Against one of several defendants	40
Any judge may deliver judgment of court or any other judge when authorized	188
Appeal from part of	183
notice of to be left with prothonotary at Halifax	185
Attachment to enforce	120
Arbitrator or referee to direct, how entered	115
Balance of successful counter-claim	65
Certificate, sufficient authority to sign	118
Change of parties after	122
Conditional, execution on	120
Contingent, execution on	120
Costs for where defence arises after action brought	71
in discretion of judge	38
application dismissed with	39
Counter-claims, on	56
Date of, when pronounced in court	117
documents left with officer	118
Debt or liquidated demand	73
several defendants	73
debt and damages	74
detention of goods and damages	73
several defendants	73
other actions	74
several defendants	73-75
setting aside judgment by default	75
third parties	75
Default of appearance: See Default of Appearance	33
amount of judgment and interest	33
at trial, of plaintiff or defendant	97
damages unascertained	33

JUDGMENT.—Continued.

	PAGE
Default of appearance: defendant out of jurisdiction	28-30
detention of goods	33
recovery of land	34
mense profits and rent.. ..	34
several defendants	33
special or otherwise indorsed writ.. ..	33
pleading:	73, 75
action to recover land	74
mense profits, rent, &c.	74
several defendants.. ..	75
Delivery of pleadings	117
Discontinuance, on	72
Enforcing judgment. <i>See</i> Execution	119, 128
Entry of:	
affidavit filed	118
at trial	97-100
certificate.	118
certificates of judge... ..	99
date of... ..	117, 118
delivery of pleadings on	117
examination of documents	118
for an act to be done ..	118
how made.	117
pursuant to order	118
return to writ, pursuant to	118
wrong on facts	115
Execution of. <i>See</i> Execution	119-128
Existing rights saved.... ..	123
Final:	
affidavit for debtor to show cause	129
on default of appearance.. ..	33
pleading.	73-75
examination of defendant before ..	37
interpleader, in	181
writ specially indorsed.... ..	37
Forms of judgment. <i>See</i> Appendix F.. ..	267-273
memorandum of service of notice of	278
order to remove judgment from county court ..	298-299
Further consideration.... ..	116
Includes decree	2
Injunction, motion to stay proceedings, instead of	6
Interlocutory judgment:	
damages, in action for.	33-34
detention of goods on default of appearance	
or pleading	33-34
Interpretation of term.	2
Intervening parties	123
Issues determined ..	116
Land. judgment for, enforced.... ..	119
writ of possession	146
Leave to sign.... ..	37-39
Motion for judgment	115-117
to set aside	115-117
Notice of motion for	115-116
One judge may deliver judgment of court	188
Part of action, judgment for.	138
issues tried	116
Partners, against.... ..	144-145
Payment into court, judgment for costs.. ..	67-68
Plaintiffs, for one or more.... ..	39-40
Postponing trial of part of cause.	116
Records of dates, filing, &c.. ..	193

JUDGMENT.—Continued.

	PAGE
Relief to defendant on counter-claim	65
Return to writ, sufficient authority to enter..	118
Rules not to curtail right to enforce	123
Satisfaction pieces.....	119
form of	273
Sequestration to enforce	120
Setting aside :	
absence at trial..	97
application where made	97
default judgment	75
wrong judgment on facts found	115
Signing for costs :	
on accepting payment into court, in satisfaction..	67-68
discontinuance. . .	72
Specially indorsed writs	37
affidavit of plaintiff	37
defendant	37
application how made..	37
judge may finally dispose of	38
give directions	38
part of claim, defence as to	38
several defendants	38
showing cause against	37
Time for motion for	116
by leave after service of writ	117
<i>See, also,</i> Appeal	183-186
Counter-claim	63-65
Default of Appearance.	32-36
Pleading	73-75
Entry of judgment	117-119
Execution	119-128
Leave to sign judgment and defend	37-39
Motion for judgment	115-117
Officers and their documents... ..	192-194
Parties	39-51
Pleading	56-61

JURAT.

Defects in... ..	III
Where more than one deponent..	110
<i>See</i> Affidavits and Depositions	109-115

JURISDICTION.

Defendant out of the jurisdiction	28-30
Of single judge	10
the supreme court.....	3-4
distribution of business by	9-10
to hear appeals	18-19
makes rules.	18-20
regulate sittings..	18
refer questions	18

JURY.

Addresses to.	98
Cases tried by jury	16-17
Causes heretofore deemed of an equitable nature tried without jury..	93
Dispensing with.	94
Fines for non-attendance	193
Judge may direct trial by	16
Juries, special.	94
List of jury and non-jury trials..	96
May be required to answer questions of fact..	17-18

JURY.—Continued.

	PAGE
Non-jury causes tried at any time the judge may appoint.	93
Notice to be given for	16
Plaintiff or defendant requiring, must give notice	16
Special jury.	94
Trial with jury to be with one judge	95
Waiver of....	16
When causes to be tried before	16-17
See Sessions, Sittings, Vacation, &c..	186-192
Trial.	92-102

JUSTICES OF THE PEACE.

Affidavits of service of writs of summons may be sworn before	28
--	----

LAND.

Actions for recovery of, forms of	253
Entry on by order	147-148
Sale of, under execution or foreclosure, when situate in adjoining counties	155-156
Suits for recovery of land, rents, &c., by mortgagors.	7
Action for recovery of:	
Appearance limiting defence	32
form of..	214
Appearance by landlord so to state	31
person not named as defendant	31
Execution in, enforced by writ of possession	119
Joining claims in	53
Judgment on default of appearance	34
form of	268
for default of pleading	74
Sale under foreclosure of mortgage..	155-156
Service of writ in vacant possession	28
Specially indorsed writ in certain landlord and tenant cases	23
Summary judgment where writ specially indorsed....	37
Title need not be pleaded in action for land in certain cases.	23
Writ of possession	146
form of....	282
When in adjoining counties	155-156
See Sales by the Court.	152-156

LAW.

All courts to give effect to Rules of, (except court of probate and surrogate courts)	6
Amendments of	7-8
Equity to prevail in cases of conflict not specified	9
Forms of defence including an objection in point of law	266-267
General directions as to administration of law and equity	4-9
Law and equity to be concurrently administered	4
Rules of law	4-9
Questions of law:	
Abolition of demurrer	71
Disposal of at trial or otherwise	71
Judgment wrongly entered on findings of fact	115
New trial for misdirection...	114
Proceedings in lieu of demurrer..	71
Special case raising questions of law	90
See Special Case	90-92

LIBEL.

Evidence in mitigation of damages	98
Payment into court in action for, not allowable	66
Rule 26 of Order 34 not to apply to	97

LIEN.	PAGE
Amount of lien claimed may be paid into court	148-149
Of solicitor not to affect set-off for costs..	198
LIMITATIONS, STATUTE OF	
Inapplicable to breach of express trust	7
How pleaded.....	58
LIQUIDATED DEMAND.	
Indorsements for....	23
Taxation of costs in payment of..	23
LIQUIDATORS' ACCOUNTS.	
Passed and verified as receivers'	151
LISTS.	
Of causes to be made up	96
Separate lists of jury and non-jury causes to be made up, how made up	96
LOCAL VENUE.	
None, except when otherwise provided by statute.....	92
LOST WRIT.	
Copy to be sealed and served in lieu of	26
LUNATICS.	
Admissions in pleadings by..	58
Appointment of guardian in Chancery Chambers	170
Consent to proceedings on behalf of.	44
Default of appearance by	32-33
Estates of....	152
How to sue or defend	152
Order for sale of realty of....	152
effect of....	153
conveyance	153
Party to special case	91
Proceedings as to real estate of	152-153
Proceeds of sale under order, how disposed of....	152-153
Report of sale to be filed.....	153
Service of notice of judgment or order on	48
writ on....	27
MALICE.	
Allegation of....	59-60
MALICIOUS PROSECUTION.	
Form of pleadings	252
MANDAMUS.	
Action of:	
Claim on writ...	159
form of	221
Enforcement against corporation	124
by attachment	120, 123, 124
ordering act to be done at expense of party	124
Extension of time...	124
Judgment	159
Order substituted for writ...	159
Power of Court..	159
When may be granted by Court	9
Interlocutory:	
Practice on granting	9, 123, 147, 149

MARKING.

Pleadings, how marked ..	58
--------------------------	----

MARRIAGE.

In case of, Court may order husband to be made a party or served with notice	51
Of any of the parties, not to abate action	51

MARRIED WOMEN.

Service when husband and wife both parties	27
Sue and be sued, as provided by law	43
Special case	91

MASTER.

Meaning of term	207
To be official referee	20

MASTERS AT CHAMBERS.

Judges of County Courts to be ..	163
----------------------------------	-----

MATTER.

Definition of	2
Arising after pleadings..	70, 71

MEMORANDUM.

Of form of service of notice of judgment	278
notice of judgment..	278

MERGER.

Abolished in certain cases ..	7
-------------------------------	---

MESNE PROFITS.

Default, in action for....	34
----------------------------	----

MIS-JOINDER.

See Parties..	39-51
--------------------	-------

MIS-NOMER.

In capias	133
----------------	-----

MONTH.

Means calendar month	194
---------------------------	-----

MORTGAGE.

Assignment of property and delivery of documents	155
Foreclosure of mortgage	155
forms ..	234-235
Lands situate in adjoining counties ..	155
Mortgagee, right of, to costs out of particular estate or funds	196
Mortgagor's powers	7
Plaintiff claiming foreclosure or sale, on what evidence entitled	35
See, also, Chambers in relation to chancery (or Equity) matters	165

MOTION FOR JUDGMENT...

Admissions of facts in pleadings	87
After trial by referee	115
of issues....	116
Application to set aside where judgment wrongly entered on findings	116
wrong judgment	115
Applications to be to the court ..	115

MOTION FOR JUDGMENT.—Continued.	PAGE
Limit of time for....	116
Motion for judgment by leave after service of writ	117
Pending application turned into motion for judgment on hearing of cause....	116
Powers of court	116
Setting aside judgment by referee	115
down motions for judgment..	115
Some only of issues found	116
Witnesses, directions for examination of on motion for judgment	117
MOTIONS AND OTHER APPLICATIONS	156-158
Abolition of rules <i>nisi</i> ...	156
Adjournment of	157
Application to Court or Judge in court to be by..	156
for moneys in court ..	158
<i>Ex parte</i> by leave	156
Failure to give notice, effect of	157
Length of notice	156
Notice to parties affected	156
dispensed with in certain cases ...	156
to defendant who has not appeared...	157
sheriff.	157
state grounds	156
Order, date of	157
Statement of persons to be served with petition	158
Time between notice and motion	156
for hearing a petition..	158
Writ, no order for return of	157
service of notice of motion with	157
<i>See, also</i> , New Trial	114
Judgment.	115
MULTIFARIOUSNESS.	
<i>See</i> Joinder of Causes of Action..	53-54
MULTIPLICITY OF PROCEEDINGS.	
To be avoided	7
NEW ASSIGNMENT.	
Abolished...	70
NEW TRIAL ..	114
Amendment of notice	114
Application to be by notice of motion, not by rule <i>nisi</i> ...	114
to court (in banc)..	114
Court of appeal may order	184
Grounds for granting or refusing	114
must be stated	114
New trial as to part, not to affect other findings	114
Power to enter judgment on motion for ..	116
Rules <i>nisi</i> for, abolished	114
Security when proceedings stayed	114-115
Substantial wrong ..	114
Time to serve notice of motion for	114
NEXT FRIEND.	
Consents by, to procedure ..	44
Infant to sue by	43
Lunatic, when to sue by	43
Not to be added without consent	44
Written authority of, to be filed	44

	PAGE
NON-COMPLIANCE.	207
By creditors and in chancery chambers..	174
Costs of dismissal of summons on application to set aside for irregularity	207
Effect of	207
Not fatal	207
Objection to irregularity must be stated..	207
On irregularity	207
Prompt application	207
With rules of court	207
any rule of practice or procedure	207
NON-JOINDER	42
<i>See</i> Parties	39-51
NOT GUILTY BY STATUTE.	
How pleaded	58
No other plea ...	58
Plea same effect as before ...	58
NOTICE.	
Of summons in chancery chambers by advertisement	172
trial	96
writ by advertisement	27
NOTICE IN LIEU OF SERVICE OF WRIT.	
Application to set aside	32
Time for appearance	29
When defendant foreigner out of jurisdiction	30
form of notice	212-213
order ..	296
NOTICE OF MOTION ON APPEAL.	
Appeals to court to be brought, by in a summary way	183
Appellant may appeal from whole or any part of judgment or order by	183
Court may direct service of, on any person not a party, &c.	183
amend as may seem fit....	183
No petition, case or formal proceeding necessary other than	183
NOTICES.	
Affidavits of solicitors or their clerks evidence of service	205
Forms of. (Appendix B.)	222-232
General provisions..	205
Hours for service	195
How to be received in evidence	205
Mode of service..	205
Of court, service by post	206
To be in writing unless expressly authorized to be given orally	205
What solicitors and clerks may make affidavits of service of..	205
Particular Notices :	
Limiting defence in ejectment	32
form of ..	214
Of appearance by landlord..	31
disputed claim in chancery chambers	175
judgment to do a specific act	118
order or judgment in administrations, &c....	47, 171
form.	278
order, &c., on person under disability	48
trial	96
To sheriff to bring in body	157
third party	48-51
<i>See</i> Trial	95-97

ORDERS.

	PAGE
Abconding Debtors :	
attachment	(Or. XLVI, rr. 1 to 5) ... 137
subsequent attachers.. ..	(" " " 6 " 10) ... 138
assessment of damages ...	(" " " 11 " 13) ... 138-139
summons to agent....	(" " " 14 " 20) ... 139-141
security for release of property	(" " " r. " 21) ... 141
security on execution	(" " " r. " 22) ... 141
re-hearing....	(" " " r. " 23) ... 141
forms....	(" " " r. " 24) ... 141
Account, application for	(XV, rr. 1 and 2) ... 39
Accounts, issues, inquiries..	(XXXII, rr. 1 to 10) .. 88-90
Action : form and commencement of.	(I, rr. 1 and 2 21
joinder of causes of	(XVIII, rr. 1 to 9) 53-54
matters arising, pending....	(XXIV, rr. 1 to 3) 70-71
Address, indorsement of	(IV, rr. 1 to 3) 24
Admissions	(XXXI, rr. 1 to 9) 86-88
Affidavits, generally....	(XXXVI, rr. 1 to 19 A) . 109-112
in chambers	(" " " 20 " 24) 112
trial on	(" " " 25 " 30) 113
Amendment	(XXVIII, " " 14) 76-77
Appeals	(LVII, " " 17) . 183-186
Appearance	(XII, " " 18) 30-32
Application for account.	(XV, " " 1 and 2) 39
Applications and motions ..	(LII, " " 1 to 16) 156-158
Arrest of defendant	(XLIV, " " 15) . 131-134
Attachment	(XLII, " " 2) 129
of debts	(XLIII, " " 9) . 129-131
Case, special.	(XXXIII, " " 7) 90-91
Causes of action, joinder of	(XVIII, " " 9) 53-54
Chambers.. ..	(LIV, " " 16) 159-162
equity.. ..	(LV, " " 49) . 165-179
Change of parties ..	(XVII, " " 10) 51-53
Claim, indorsement of.. ..	(III, " " 7) . 22-24
statement of.	(XX, " " 6) 61-62
Companies, foreign	(XLVII, " " 7) . 141-143
Concurrent writs....	(VI, " " 1 and 2) 25
Costs ..	(LXIII, " " 1 to 23) . 195-204
Counter-claim and defence..	(XXI, " " 20) 63-65
Debtors, absconding	(XLVI, " " 24) . 137-141
Debts, attachment of	(XLIII, " " 9) 129-131
Declaration on originating summons.	(LIV A, " " 4) 162
Defence and counter-claim..	(XXI, " " 20) 63-65
Defendant, arrest of....	(XLIV, " " 15) . 131-134
Default of appearance	(XIII, " " 13 A) . 32-36
pleading	(XXVII, " " 14) 73-75
Delivery, writ of....	(XLIX, " " 2) . 146-147
Demurrer, proceedings in lieu of	(XXV, " " 5 A) 71
Directions, summons for....	(XXIX, " " 7) . 78-79
Disclosure by solicitors..	(VII, " " r. I) 25-26
Discontinuance	(XXVI, rr. I " 4) 72
Discovery and inspection	(XXX, " " I " 31) 79-86
Entry of judgment.	(XXXIX, " " I " 11) . 117-119
Equity Chambers	(LV, " " I " 49) 165-179
Evidence ..	(XXXV, " " I " 38) .. 103-109
Execution	(XL, " " I " 47) 119-128
and sequestration writs of	(XLI, " " I " 4) 128
Firms, actions by and against	(XLVII A, " " I " 11) 143-146
Form and commencement of action	(I, " " I and 2) 21
Foreign companies	(XLVII, " " I to 7) 141-143
General rules	(LXX, " " I " 3) 208
Indorsements of claims	(III, " " I " 7) 22-24
Inspection and Discovery...	(XXX, " " I " 31) 79-86

ORDERS.—Continued.

PAGE

Interlocutory orders....	(Or. L, r r. 1 to 23)	147-151
Interpleader	(" LVI, r r. 1 to 17)	179-183
Interpretation.. ..	(" LXIX, r r. 1 and 2)	207
Issue of writs of summons..	(" V, r r. 1 to 6) ..	24-25
Issues, inquiries and accounts ..	(" XXXII, r r. 1 to 10)	88-90
of fact without pleadings	(" XXXIII, r r. 8 to 11) ..	91-92
Judgment, entry of	(" XXXIX, r r. 1 to 11)	117-119
motion for... ..	(" XXXVIII, r r. 1 to 12) ..	115-117
where writ specially indorsed..	(" XIV, r r. 1 to 9)	37-39
Joinder of causes of action..	(" XVIII, r r. 1 to 9)	53-54
Jurisdiction service out of	(" XI, r r. 1 to 5A)	28-30
Mandamus, action of	(" LIII, r r. 1 to 4) ..	159
Master at Chambers....	(" LIV, B, r r. 1 to 3)....	163-164
Motion for judgment	(" XXXVIII, r r. 1 to 12)	115-117
new trial.....	(" XXXVII, 1 to 8)	114-115
Motions and other applications	(" LII, r r. 1 to 16)....	156-158
Non-application of rules	(" LXVI, r r. 1 and 2)	206
Non-compliance....	(" LXVIII, r r. 1 to 4)....	207
Notices	(" LXIV, r r. 1 and 2)	205
Officers and their documents	(" LIX, r r. 1 to 17)	192-194
Orders, interlocutory... ..	(" L, r r. 1 to 23)	147-151
service of	(" LXV, r r. 1 to 8) ..	205-206
Originating summons declaration on(	( " LIV A)	162
Parties	(" XVI, r r. 1 to 56)	39-51
change of	(" XVII, 1 to 10)	51-53
Payment into court and tender	(" XXII, r r. 1 to 17)....	66-69
Pleading, default of	(" XXVII, r r. 1 to 14) .	73-75
generally	(" XIX, r r. 1 to 29)	56-61
Pending the action, matters arising (	( " XXIV, r r. 1 to 3)	70-71
Proceedings in lieu of demurrer	(" XXV, r r. 1 to 5 A)	71
Possession writ of	(" XLVIII, r r. 1 to 4)	146
Renewal of writ....	(" VIII, r r. 1 to 3)	26
Replevin	(" XLV, r r. 1 to 9)....	134-136
Reply	(" XXIII, r r. 1 to 6)	69-70
Rules ..		
general	(" LXX, r r. 1 to 3)....	208
non-application of	(" LXVI, r r. 1 and 2)	206
Sales by the court.. ..	(" LI, r r. 1 to 12)....	152-156
Sequestration, writs of and execution(	( " XLI, 1 to 47) ..	119-128
Service of orders	(" LXV, r r. 1 to 8)....	205-206
writ of summons	(" IX, r r. 1 to 10)	27-28
out of jurisdiction ..	(" XI, r r. 1 to 5 A)....	28-30
substituted	(" X) ..	28
Sessions, sittings and vacations	(" LVIII, r r. 1 to 24)	186-192
Sittings, sessions and vacations..	(" LVIII, r r. 1 to 24)	186-192
Special case	(" XXIII, r. 1 to 7) ..	90-91
Statement of claim	(" XX, r r. 1 to 6)	61-62
Substituted service	(" X) ..	28
Summons for directions	(" XXIX, r r. 1 to 7)	78-79
issue of writs of ..	(" V, r r. 1 to 6)	24-25
service of	(" IX, r r. 1 to 10)	27-28
writ of... ..	(" II, r r. 1 to 6)	22
Tender, payment into court and	(" XXII, r r. 1 to 17)	66-69
Time	(" LX, r r. 1 to 9)	194-195
Trial.....	(" XXXIV, r r. 1 to 48)	92-102
without pleadings	(" XXXVIII A, r r. 1 to 6) ..	55-56
Trustee Act proceedings under..	(" LIV C, r r. 1 to 6) ..	164-165
Vacations, sittings, sessions	(" LVIII, r r. 1 to 24) ..	186-192
Writ of delivery	(" XLIX, r r. 1 and 2)....	146-147
possession.. ..	(" XLVIII, r r. 1 to 4)	146
summons	(" II, r r. 1 to 6) ..	22
Writs of execution and sequestration(	( " XLI, r r. 1 to 47) ..	118-128

ORDERS.—Continued.

	PAGE
Writs of summons, issue of (Or. V, r r. 1 to 6) ..	24-25
service of (" IX, r r. 1 to 10)....	27-28
concurrent.. (" VI, r r. 1 and 2)	25

ORDERS, SERVICE OF.

Affidavits of service, what to contain...	206
Constructive service	206
Original need not be shown except for attachment	205
Party suing in person afterwards employing solicitor	206
Service of documents where personal service not necessary....	205
by post.	205
on solicitor appearing for person not a party	206
Where no appearance or no address	205
personal service not necessary, what to be sufficient....	205

ORIGINATING SUMMONS.

Administrations and trusts	166-170
Appearances to be entered.	166-170
Attendance on	160
notice of	160
Default of appearance to	36
For determination of rights	162
Application for	162
Discretion of judge	162
Evidence	162
Service....	160, 162
Form and issue of	159
Interpretation of term	207
Preparation of	159
Service of, out of jurisdiction	29
Time of service	160
See Proceedings under Trustee Act	164

PARTICULARS.

Forms of orders for....	293-294
Further and better	57
Order for, no stay of proceedings	57
Time for pleading after delivery ..	57
When to be stated in pleading..	57

PARTIES.

Abatement, parties may be added..	51
Adding parties :	
at any stage of proceedings....	42
bankruptcy, death or marriage	51
beneficiaries in addition to trustees	41
by motion or summons before trial	43
in a summary way at trial	43
on notice..	43, 48
third parties... ..	48-49
Additional plaintiff	39-40
how added	42-43
statement of claim....	43
Additional defendant	40-41
amendment of writ of summons	43
statement of claim	43
Administrations	45-48
Amendment, how and where made ..	43
Appearance by new	52
third.	49
Assignment	51
Beneficiaries may be joined, added, or substituted..	41

PARTIES.—Continued.

	PAGE
Beneficiaries need not be joined in foreclosure	41
Change of parties	51-53
adding new, <i>ex parte</i>	51-52
after judgment	122-123
application to discharge order	52
by persons under disability	52
time for	52
assignment <i>pendente lite</i>	51
bankruptcy	51
death	51
successor in interest may be joined	51
effect of order	52
marriage	51
husband may be joined	51
service of order	52
Character of parties to be indorsed on writ	23
forms of indorsement	222
Class :	
one may sue or be sued on behalf of a	45-47
representatives of an unascertained	45-46
Compromise of trust proceedings	42
Counter-claim, persons interested in to be added	64
where misjoinder of co-plaintiff	40
Co-partners	143-146
Death of	51
Defective action, parties may be added	51
Defendants jointly or severally	40
Devolution of estate of	51
Doubt as to proper parties	40-41
doubtful plaintiff	40
Executors and administrators alone	41
beneficiaries may be added	41
in cases of foreclosure	41
Firm, actions in name of	143
Foreclosure	41
joinder in cases of	41
Heir-at-law, inquiry as to	45-46
need not be joined in foreclosure	41
person appointed to represent	46
Infants sue by next friend	43
appear by guardian	43
form of affidavit by solicitor appearing for	216
Interpretation of term "Party"	1
Interrogatories by	79-86
Joinder of parties	39, 40
Jointly and severally liable	40
Lunatics	43
Marriage of	51
Married women	43
Misjoinder not to defeat action	42
affect counter-claim	40
Mortgagor suing alone, when	7
Non-joinder	42-43
Notice to third party	48-49
Next of kin	45-48
Numerous parties may be represented by one	45-46
One person carrying on business in name of firm	145
Original in new capacity	51-52
Partners can sue and be sued in name of firm	143
Party appointed by court	41
Paupers by and against	44-45
Plaintiff, joinder of	39

PARTIES.—Continued.

	PAGE
Plaintiff, joinder of not to cause embarrassment, &c..	39
Representative character to be endorsed on writ forms of such indorsements.	23 222
Representation of a class	45-48
Residuary legatee...	46
Service with notice of leave on continuing parties motion dismissed where parties not served	48-49 52 157
Serving new defendants with statement of claim	43
Striking out	42
Substituted plaintiff. application for substitution..	40 43
Third parties:	
appearance by.	49
contribution against	48-51
default of appearance by pleading by	49 75
defence by	50
defendant may bring in	5
execution by and against	123
form of notice of counter-claim	222-223 223
garnishee.	130
indemnity against	48-51
indorsement of writ served on form of	64 223
issues affecting...	75
notice to	5, 48-49
recovery of land...	31
reply to counter-claim by	64
service of counter-claim on summons to...	64 64
Trustees represent beneficiaries..	41
Trust proceedings, compromise in case of...	42
Wrong plaintiff..	40
See Administration and Execution of Trusts.	45-48
Change of Parties by Death..	51-53
Defence and Counter-Claim	63-65
Parties (Generally)..	39-43
Partners	143-146
Persons under disability	34-44
Paupers	44-45
Third Party Procedure	48-51

PARTITION.

Evidence on	35
Form of præcipe for commission of	276
Form of statement of claim for, or sale of real estate	238
Where notice of judgment or order for, to be given plaintiff claims foreclosure, administration or partition, entitled to judgment, on what evidence	47 35

PARTNERS.

Appearance by..	144
no, except by member of firm..	144
under protest	144
Attachment of debts due firm	145
Co-partners, &c., actions between	145
Application of rules, &c...	145
Disclosure of names.	143
form of order for..	293
court or judge may direct	57, 143

PARTNERS.—Continued.

PAGE

Execution against firm ..	144
by name of court ..	145
May sue or be sued in firm name ..	143
Notice, in what capacity served ..	144
Person trading in firm name ..	145
Service on ..	143

PAUPER.

Affidavit verifying case ..	44
Assignment of solicitor or counsel ..	45
Case before counsel ..	44
Duties of pauper's solicitor ..	45
Freedom from court fees ..	45
Prohibition as to giving or taking fees ..	45
Rules as to proceedings as ..	44-45
Suing as ..	44
Taxation of costs of ..	45

PAYMENT.

Of disputed chose in action, debtor, trustee, &c., may pay the same into supreme court ..	8
The manner of payment into and out of court to be subject to regulations in Appendix M....	68

PAYMENT INTO AND OUT OF COURT AND TENDER.

Acceptance by plaintiff in satisfaction ..	67-68
time limited for ..	67
notice to defendant ..	68
form ..	68, 224
Application to convert stock, &c.	69
Claim satisfied by payment to be specified	66
Costs taxed ..	67-68
Counter-claims, payment may be made by plaintiff ..	68
Debt or pecuniary damages ..	66
Execution to enforce payment in ..	119
How appropriated ..	68
made ..	66
In consolidated actions ..	68
Interim order for payment in ..	147
Judgment for costs after acceptance ..	67-68
form of judgment ..	272
Jury not to be informed of ..	69
Lien claimed, payment into court ordered ..	148-149
Money to remain in court if not accepted ..	67
of persons under disability ..	68-69
how invested ..	69
paid in previous to Rules ..	68
subject to control of court ..	69
Notice of payment (before defence) ..	66
form of ..	69, 223
of acceptance in satisfaction ..	67-68
form of ..	224
Payment into court, how appropriated ..	68
out to plaintiff ..	66
solicitor on written authority ..	66
to be pleaded in defence ..	66
Plaintiff may accept or refuse ..	67
Provisions relating to payment of money into and out of court deemed to be provisions relating to practice and procedure ..	19
Rules in Appendix M.	68
Signing judgment for costs if not paid ..	68
Taxation for costs after acceptance in full satisfaction	68

PAYMENT INTO AND OUT OF COURT AND TENDER.—Continued.		PAGE
Tender	66	66
Time for payment	66	66
limited for acceptance in satisfaction	67	67
When admissible	66	66
Where lien claimed, payment into ordered	148-149	148-149
With leave after defence	66	66
<i>Appendix M.</i>	336	336
Accountant-General to invest according to order of court or judge and report	336	336
Books to be kept by prothonotary and Accountant-General	336	336
Books to be kept by prothonotary and Accountant-General to be open to inspection	336	336
Report to be made annually by prothonotary and Accountant-General	336	336
When money is to be invested, prothonotary shall pay over to Accountant-General	336	336
When securities are to be sold, &c., Accountant-General to carry out directions and report	336	336
PENALTY.		
Leave to compound penal action	149	149
Notice when part goes to the Crown	149	149
Order to compound, what to state	150	150
Crown's half, how appropriated	150	150
PENDING ACTION.		
Confession of defence	71	71
form	224	224
Pleading matters arising	70	70
before statement of claim	70	70
after statement of claim	70	70
PENDING APPLICATION.		
May be turned into motion for judgment, when	116-117	116-117
PERISHABLE GOODS.		
Power to make order for sale of	137-138, 147	137-138, 147
PERPETUATION OF TESTIMONY.		
Action to perpetuate testimony	108-109	108-109
Attorney-General may be made defendant	109	109
No examination before action	109	109
Trial not necessary	109	109
PERSON.		
Interpretation of term	207	207
PERSONAL REPRESENTATIVE.		
May be made party to action or served with notice in case of death of any of the parties to an action	51	51
PETITION.		
Address for service on	24	24
Evidence on, by affidavit	109	109
Exception of petitions from certain rules of pleading	58-59	58-59
For purchase money to be paid into and out of court	158	158
Hours for serving	195	195
In cases of appeal not to be necessary	183	183
Interval between service and hearing	158	158
Mode of serving	205-206	205-206

PETITION.—Continued.

PAGE

No new pleading except petition or summons	58-59
Persons to be served, statement of	158
"Petitioner" includes applicant by motion or summons	2
"Plaintiff" includes petitioner..	208
"Pleading" includes petition	1
Service	205-206

PLEADING.

Abatement, plea in, abolished	65
Admissions of facts not denied... ..	58
denial to be specific, or by necessary implication.	58
except as against infants and lunatics	58
All facts must be pleaded to prevent surprise	58
Alternative reliance on several contracts or relief	60
Amendment of pleading	60, 76-77
Bankruptcy of parties	51
Burden of proof	60
Claim, statement of	61-62
Close of pleadings	70
by default of pleadings	75
Condition of mind	59-60
Conditions precedent need not be averred	58
Confession of defence	71
Consideration for bill of exchange	60
Contents of	57
Contracts implied from letters, conversations or circumstances... ..	60
contract to be alleged as a fact with general reference	60
Copies delivered on entry for trial	96
to be certified by prothonotary	96
Costs:	
confession of defence arising after action brought	71
facts improperly denied or admitted	64
prolixity of	56
Counter-claim	56, 63-65
Dates to be in figures.... ..	57
Damage, special, need not be alleged in certain cases	61
Default of	73-75, 76
Death of party	51
Defence	63-65
Definition of	2
Delivery of	57-58
amended pleadings	76
by filing if no appearance entered	58
copy of pleadings at trial to prothonotary	96
defence	57, 63
in manner now in use	57-58
reply	57, 69
statement of claim	57, 61-62
vacation	186-187
Demurrer abolished	71
Denial must be specific.. ..	59
answer point of substance	59
not to be evasive	59
of contract... ..	59
representative character to be specific.. ..	63
Discontinuance	72
Documents, contents of.. ..	59
disclosed in pleadings must be produced	81-82
Embarrassing to be struck out... ..	60
Evasive denials	59
Evidence not to be stated	57
Executor, character as, to be specifically denied	63

PLEADING.—Continued.

	PAGE
Facts not denied specifically taken to be admitted	58
except as against infants and lunatics	58
only to be stated	57
relied on to be raised	58
arising <i>pendente lite</i>	70
confession of, by plaintiff	71
costs	71
counter-claim	70
further defence or reply	70
Figures and not words	57
Filing, in what cases	58, 60
Forms of pleadings in various actions.	
Appendix C., D., E. 232-253, 254-263, 264-267	
Fraud, particulars in	57
Fraudulent intention	59-60
Further and better particulars	57
Implied contract or relation	60
Includes petition and summons	2
Inconsistent facts, with previous pleadings	58-59
Interpretation of term	2
Issues of fact settled	90
Joinder of causes of action	53-54
issue	59
close of pleadings by	70
no pleading after reply without leave	69
Joinder of parties	39-40
Knowledge	60
Land, action to recover. <i>See</i> Land.	
Leave to deliver after reply	69
further defence or reply	70
Legality or sufficiency in law must be denied	59
Mandamus	159
Marking, pleadings with :	
date of delivery	58
description of pleading	58
letter and number	58
title of action	58
Marriage of party	51-53
Material facts to be stated	57
Matters arising after action brought	70
Must be consistent with previous case	58-59
New assignment abolished	70
amendment instead of	70
New grounds of claim only by amendment	58-59
No technical objections to	60
Not guilty by statute	58
no other defence without leave	58
Notice to be alleged without the form	60
Numerical figures	57
Paragraphs numbered	57
Particulars in certain cases	57
Payment into court	66-69
<i>Pendente lite</i> , matters arising	70
Possession of defendant in action for land	65
Preliminary question of law	90
Presumption of fact	60
law	59
Printed or written, or partly printed and partly written	57
Prohibition	206
Proximity, costs incurred	56, 201-202
Release must be pleaded	58
Relief must be specifically stated	62

PLEADING.—Continued.

	PAGE
Reply.....	69-70
Right as executor to denial specifically	63
Rules substituted for old rules	56
may be made regulating	18-19
for payment of money into and out of court	68
Set-off	56, 63-65
Setting aside judgment by default	75
Signature of solicitor or party necessary	57
Slandorous words spoken of a woman.....	61
Special damages need not be alleged in certain cases.	61
Specific denials..	59
Statements in, to be in a summary form.....	57
brief	57
Statement of claim	61-62
defence	63-65
reply	69-70
Stating evidence, improper..	57
material facts sufficient..	57
Statute of frauds.....	58, 59
limitations....	58
Striking out counter-claims	56
defence	72, 84
pleadings	60
Subsequent to reply, time for.....	69
leave required..	69
Sums to be in figures.....	57
Technical objections not allowed on grounds of form	60
Third parties.....	5, 48-51
Time for:	
after particulars...	57
amendment.....	76
close of pleadings..	70
counter-claim, amendment of	76
reply to	64
delivery of defence	63-65
reply...	70
statement of claim..	61-62
enlargement of	195
set-off, amendment of..	76
Trial, delivery of pleadings on entry for	96
without pleadings.	55-56
Undue influence, particulars in	57
Vacation	186-187
What facts must be pleaded.	58
Written or printed	57
Wilful default, particulars in	57
Woman, slanderous words spoken of	61
Written alteration by way of amendment.....	77

POINT OF LAW.

How raised	71
------------------	----

POSSESSION.

Affidavit of service of judgment before issuing writ of	146
Effect of writ of.	146
Mortgagor may sue for, if no notice from mortgagee to take.. ..	7
Service of writ, where vacant possession.	28
Separate execution for possession and for costs	146
Writ of possession	146

POSTING UP.

In place of service	205
------------------------------	-----

POUNDAGE.	PAGE
To be levied under writ of execution	121
PRÆCIPES.	
Forms of, (Appendix G.)	273-278
PRECEDENCE.	
Of Chief Justice.	8
Other judges.	3
Vacancy in office of Chief Justice	208
PRELIMINARY.	
Questions of law may be heard prior to trial.	90
PRESERVATION OF PROPERTY.	
<i>See</i> Interlocutory Order..	147-149
PRINTING.	
Evidence and documents to be used at argument	190-192
Pleadings may be printed or written, or partly printed and partly written	57
Rules for printing case for argument	190-191
Special case.	91
Term "Case" in Rule (797) to include appeal papers, orders, minutes of evidence, case stated, affidavits, exhibits, report trial, and all other matter for argument	191
PROCEDURE.	
Additional Rules may be made by judges....	18-19
Chambers	159-162
Chancery Chambers.	165-179
Divorce or other matrimonial causes	206
Effect of non-compliance	207
Existing, to remain in force where no provision made by Act or Rules.	208
Practice or procedure in criminal proceedings unaffected	206
Prohibition	206
Provisions of the Act and Rules to receive liberal construction	20
Referees, procedure before regulated	20
Supreme court forms and methods of procedure in force previous to first of October, 1884, when not inconsistent with Act or Rules, may continue to be used.	18
Trial by jury	16-18, 94
PROCEEDINGS.	
Action, other than	21
Amendment, if defect or error in	77
Other than action	21
PRODUCTION OF DOCUMENTS.	
Before examiner	103-107
For inspection	81
Notice to produce	87
Subpœna duces tecum	107, 108-109
forms of	283-284
<i>See</i> Discovery and Inspection	79-86
PROHIBITION.	
Application of certain rules to	206
Cause in supreme court not to be restrained by..	6
Form of writ	285
Injunction may be granted by interlocutory order of the court... ..	9
Pleadings in	206

PROLIXITY.	PAGE
Costs of in writs and indorsements	22
in affidavits.....	110
discretion of taxing authority	201-202
pleadings ..	57
title of affidavits	109-110
Pleading to be a summary statement.	57
PROMISSORY NOTE.	
Action on, writ may be specially indorsed	23
All or any persons severally, or jointly and severally, liable on may be joined as parties	40
Form of statement of claim	240
defence	257-258
<i>See Bills of Exchange.</i>	
PROPERTY.	
Absent or absconding debtors	137
Detention, preservation and inspection of	147-148
Interim preservation of	147
Sale of perishable	147
stock or goods of perishable nature of absent or absconding debtor	137-138
Where property to be replevied is concealed	135-136
PROTHONOTARY.	
Definition of term.....	208
Duty of with decision	17
to furnish bill of items when required	199
To group causes for argument before court at Halifax.....	188
examine bills of costs	199
keep record of attachments ..	130-131
When may tax costs.	199
<i>See Officers and their Documents</i>	192-194
QUESTIONS OF FACT.	
Consent to pay money and costs on findings.. ..	92
Entry of judgment on findings ..	92
Issues by consent and order ..	91-92
Jury may be required to answer in certain cases.. ..	17
May be referred by judge in certain cases....	16-18
Recording proceedings on issue.. ..	92
Without pleadings ..	91-92
QUESTIONS OF LAW.	
Abolition of demurrer....	71
Judgment wrongly entered on findings of fact	115
New trial for misdirection	114
Proceedings in lieu of demurrer	71
Special case raising questions of law	90-91
<i>See also Law.</i>	
QUORUM OF COURT.	
Four judges to constitute.....	187
REAL ESTATE.	
Allowance of income out of	149
Amendments of law as to....	7
Bound by a judgment or mortgage, situate in adjoining counties	155-156
Conduct of sale of	149
Foreclosure, partition, &c....	35, 154

REAL ESTATE.—Continued.

	PAGE
Infants, estate of	152-154
Heir-at-law as party to action	41, 45-46, 48
Legatee with charge on	46
Lunatics, estate of	152-154
Mesne profits and damages	34
Recovery of	34
Sales of	154
Situate in adjoining counties	155-156
Nova Scotia, service on defendant out of jurisdiction	28-30
Writ of possession	146
See Chancery Chambers	165-179

RECEIVER.

Application <i>ex parte</i> to appoint	9, 148
Appointment of, matters to be considered	150
Adjournment for security to be given	150
Deposit of completed accounts in prothonotary's office	151
Form of accounts. (No. 13, Appendix L.)	327-329
statement of claim for	234, 237
Indorsement of claim for	22
Interlocutory order for	9, 148
Passing accounts by	151
Penalty for neglect	150
Power to appoint	9
Security to be given by	150
form of. (No. 19, Appendix L.)	333-334
Verification of accounts	151
form of (No. 20, Appendix L.)	334

RECORD.

Entry of findings of fact, and certificates of judge at trial	90
Supreme Court to continue to be a court of	3
Withdrawal of	72

RECTIFICATION.

Statement of claim in action for	237
--	-----

REFEREES.

Adoption or variation of certificate on further consideration	178-179
Authority of referee	177
Control of court over referee	177-178
Dying, declining to act, &c.	90
Discretion as to costs	101
Effect of findings or certificate	177
Evidence and procedure before	177
Forms of orders of reference	300-301
Generally, provisions respecting	177-179
Judge may appoint in case of death, refusal to act, &c.	90
Motion to set aside certificate of	178
limit of time for	178
No authority to commit	100
Notice of referee's report	101
Official referees, appointment of	20
Power to direct judgment to be entered	100-115
form of judgment	269
submit questions to court	100-101
as to discovery	100
to order trial before special or official	94
Report of referee	100-101
To sit <i>de die in diem</i>	100
Trial and proceedings before	100-101

REFEREES IN CHANCERY CHAMBERS.	PAGE
Accounts, &c., may be referred	177
how taken	177
Certificate, form of	177, 178, 321
may be prepared by solicitor	177
in case of account	178
to be filed	178
discharge of	179
Chief clerk in England, to take place of	177
Computation by, may be acted upon without order ..	177
Opinion of judge may be taken	178
Parties and witnesses bound to attend, &c.	177
Powers of	177
 RELIEF.	
All remedies to be granted and multiplicity of suits avoided	7
Equitable to plaintiffs and defendants	4-5
Common law rights, recognition of	6
Counter-claims and third parties	5
Indorsement on writ of relief claimed	22
Power to grant relief to defendant and third parties ..	5
Separate causes of complaint	62
<i>See</i> Execution.	
Interpleader.	
 RENEWAL OF WRIT... ..	26
Evidence of	26
Execution	122
evidence of ..	122
Form of memorandum for	26, 213
notice of	230
order for ..	297
præcipe for renewal ..	276
Leave to renew within twelve months ...	26
Lost writ... ..	26
Renewal for six months	26
 RENTS.	
Form of statement of claim for	217
Mortgagors, in certain cases, may sue for	7
 REPEAL.	
Powers of court to ..	18-19
 REPEALED RULE.	
When not revived	208
 REPLEVIN..... ..	134-136
Affidavit for, to be filed before issue of order.	134
form of	134, 313
Bond to sheriff	135
form of	135, 313
Defendant may retain possession on giving security ..	136
Form of bond to retain property	313
Order of, form of	312
Return to order, what to contain	136
Search of defendant's person and premises... ..	135-136
Service of order	135
when to be made	135
Sheriff's duty, on receipt of order	135
When property concealed, building may be broken open after demand	135
Writ abolished, order substituted	134
form of order	312

REPLY AND SUBSEQUENT PLEADINGS.

	PAGE
Amendment to supersede new assignment	70
Forms	264
Leave necessary after reply	69
New assignment abolished ..	70
Pleadings closed on joinder of issue	70
Time for pleadings after reply	70
limited for reply...	69
Where counter claim pleaded	70

REPORTERS.

May be appointed	99
------------------------	----

REPRESENTATIVE.

Action by, on behalf of estate	41
Deceased person	41, 46, 48
Denial of representative capacity ..	63
Heir-at-law	45-46, 48
Next of kin	45-46
Representative action ...	41
Writ by or against..	23

RETURN.

Notice to sheriff, if not complied with, to entitle person to apply for order for committal	157
Service of writ of summons, before whom sworn	28

RULES FOR THE CONCURRENT ADMINISTRATION OF LAW AND EQUITY.

(1.) Plaintiff to be entitled to relief on equitable grounds....	4-5
(2.) Defendant to be entitled to relief on equitable grounds	5
(3.) counter-claims and third parties	5-6
(4.) Equities appearing incidentally....	6
(5.) Defence or stay of proceedings instead of injunction or prohibition	6
(6.) Common law and statutory rights and duties	6
(7.) Complete justice to be done in every case as far as possible	7

RULES OF COURT.

Court or majority of judges present at any meeting for that purpose held, may annul or alter and amend and make further or additional Rules of Court	18
--	----

Particularly :

(1.) To regulate sittings of court and judges in chambers....	18
(2.) the pleading, practice and procedure, and the rules of law in certain cases.	18
(3.) For the providing of juries	18
(4.) For hearing of appeals, matters brought up by writs of <i>certiorari</i> from courts or officers; hearing and arguments of motions or appeals from any one judge; for regulating the selection of judges to hear arguments on appeals, or motions; and for regulating practice on such arguments	18-19
(5.) Relating to payment into or out of court, what deemed to be....	19
(6.) Generally to regulate practice and procedure, costs and matters deemed expedient for the better attaining the ends of justice.	19
Interpretation of term "Rules"	1
Judges to continue to have power to make Rules.	19
May modify statutes in certain cases.	19
Official referees.	20
Repealed on address of Legislature..	20
Rules of 1884 not to affect criminal or divorce proceedings	206

RULES OF COURT.—Continued.

PAGE

To be laid before Legislature	20
published in <i>Royal Gazette</i>	19
regulate distribution of business..	18-19
duties of officers of court	20
have force after publication in <i>Royal Gazette</i>	19

RULES OF LAW.

Upon certain points declared, viz. :

(1.) Statute of Limitations inapplicable to express trusts	7
(2.) Equitable waste	7
(3.) Merger.....	7
(4.) Suits for recovery of land, rents, &c., by mortgagors ..	7
(5.) Assignment of debts and choses in action ..	7-8
(6.) Stipulations not of the essence of contracts	8-9
(7.) Mandamus, injunctions and receivers	9
(8.) Custody of infants	9
(9.) Cases of conflict not enumerated ...	9

RULES NISI.

Abolished in actions	156
certain other cases	156
motions for new trial	114

SALE.

In interpleader	181
Debenture holders action	154
Judge to approve sale, and all parties to join	154
Of goods of a perishable nature..	137, 147
property, sale by auction or private contract	166
Power to order sale of real estate	154
Sales by the court....	152-156
Title may be referred to counsel.	154
Under will, administrations, execution of trust, &c ..	149
Value to be fixed by affidavit	154-155

SALES BY THE COURT.

Foreclosure :

Assignment of property and delivery of documents	155
Deficiency, judgment for	155
Property in adjoining counties....	155-156
Sales of mortgaged property, how ordered in behalf of subsequent	
encumbrancers	155
Sheriff or person appointed, sale to be by	155
Surplus, distribution of	155

Generally :

Affidavits as to value	154
General power to order sale of real estate....	154
Judge to approve sale, and all parties to join	154
Title may be referred to counsel	154

Lunatics' and infants' estates :

Effect of order for sale ..	153
conveyance	153
sale.....	153
Proceedings as to real estate of lunatics, infants, &c..	152-154
Proceeds of sale under order, how disposed of....	152-153

SAMPLES.

Order to take....	147-148
-------------------	---------

SATISFACTION PIECE.

Form of	119, 273
How signed	119

SCANDALOUS MATTER.

PAGE

May be ordered to be struck out of any statement	60
Objection to answering interrogatories containing....	80
Restriction on cross-examination	98
Striking out from affidavits	III
pleadings	60.

SEALS.

Authentication of documents and copies by prothonotary's seal	192
Of prothonotaries	192
the Supreme Court	2

SEARCH.

Certificate of proceedings by prothonotary	193
Indexes to files or bundles of all documents open to public...	192
Prothonotary to keep proper books open to public	192-193

SECURITIES.

Appeal security on, how regulated	185
Assignment of, to sureties... ..	8
Before execution against absent or absconding debtors	141
Bond on arrest under capias,	132
to sheriff on replevin	135
How plaintiff may obtain security in suits against absent debtors	142
Security to retain property replevied....	136
Transfer by execution	125
When made to prothonotary as obligee, how enforced	193

SECURITY FOR COSTS.

Amount, time, manner and form	197
Court or judge shall direct deposit or security on appeal.. ..	185
may direct security in case of subsequent attachers....	138
Security by bond to party	197
Time for, how computed	194-195
Where plaintiff resides out of Nova Scotia	196

SEDUCTION.

Form of claim for	250
Trial of, by jury.	16-17

SEQUESTRATION.

Corporation, judgment against enforced by	124
Disobedience to order to do act within limited time.. ..	128
Effect of writ of.	128
Form of præcipe for writ of.	273
writ of.	280
Judgment for recovery of certain property enforced by	119-120
Not to be issued for costs without leave.. ..	128
Payment of money into court enforced by ..	128
Proceeds dealt with as formerly in chancery	128

SERVICE.

Acceptance of service by solicitor....	27
Attachment for not entering appearance.. ..	31
Address for service :	
defendant appearing in person ..	30
defendant's solicitor	30-31
illusory address set aside	31
plaintiff's address	24
proceedings may be posted up in certain cases...	31
Affidavit of service :	
day of service to be mentioned in....	28
before whom sworn in certain cases	28

SERVICE.—Continued.

PAGE

Affidavit of service :	
default of appearance, on	33
form of affidavit of service.	230-231
what to state	206
Appeal, service of notice of.. ..	183
Body of persons, on	27
Contribution, service of notice of claim for.. ..	48-49
Corporations, on	27
Counter-claim, service of order on third party affected by....	64
Court notices, may be sent by post	205
Date of, to be indorsed on writ	28
Defendants added, service on....	42-43
Dwelling-house, service at	28, 32-33
Filing to be service in case of non-appearance.. ..	58
Garnishee, on	129
of order on to bind debts	129
Guardian, on	27
Hours for effecting	195
Husband and wife, on	27
Indorsement of time of.. ..	28
Infant, on....	27
Inspection, service of order for.. ..	84
Intervening party, on	64
Land, action to recover, service in	28
Lunatic, on.	27
not so found....	27
New trial, service of order to show cause	114
Notice in lieu of writ, service of.	30
Notice of motion .	
attachment of debts, notice for	129
before appearance.	157
without leave, if time to appear has expired....	157
with leave, if time to appear has not expired	157
with writ by leave	157
Notices of court, how served	205
Order :	
adding or changing parties....	52
discovery or inspection....	84
Out of jurisdiction	28-30
affidavit of grounds....	28
concurrent writ, for	25
defendant not British subject, &c	30
leave necessary....	22
time for appearance....	29
of originating summons....	30
Partners, on	143-144
Personal service	27
Petition before appearance	157
Posting up in lieu of	205
Substituted service	28
affidavit in support	28
order for....	28
form of order....	297
Subpoena, how effected.. ..	108
Summons before appearance	157
Third party, on.. ..	49
Time for service of summons	194
Writ of summons	27-28
by whom made	27
out of jurisdiction	28-30
leave required....	22
Undertaking to accept... ..	27-31

SESSIONS, SITTINGS, VACATIONS, &c.

	PAGE
Additional jurors for special sittings, rule for	18
Adjournment of court when judge does not arrive	15
Adjourn and extend, judge may	15
Civil sittings in Halifax	10-11
Contempt during vacation	187
Commencement and end of vacation	186
Criminal sittings in Halifax	11
Court always open	186
County court judge, when may hold.	15
Docket for arguments, calling of	189
Entries of causes for argument	188
consequence of not making	190
Equity judge, exemption of	15
Extension or adjournment	15
Halifax sittings, civil and criminal	10-11
Jury fines	193
collection of	193
causes to be tried first	15-16
Minutes of judge	99
Non-entry, consequence of	190
Non-jury causes tried any time	9
Order of court to be taken out in session in which judgment delivered	190
Printing of causes and matters for argument.	190-192
Quorum	187-188
Special sittings	14-15
Stamps on cases	191
Ten causes, limitation to	11
Terms abolished, except as a measure of time	9
Vacation	186

SET-OFF.

Against assignee of chose in action	8
Effect on costs generally	196
How and when pleaded..	56-64
Lien for costs not to be affected by...	198
See also Counter-claim.	

SETTING ASIDE.

Award, no rule <i>nisi</i> for	156
Defence.	71
Irregular proceedings	207
Judgment by default	75
wrongly entered at trial...	115
Notice of motion to set aside certain proceedings.	32

SETTLED ACCOUNT.

How pleaded....	62
-----------------	----

SETTLING ISSUES OF FACT.

If parties differ in, court or judge may settle same....	88
--	----

SHERIFF.

Discovery by sheriff's officer	85
Indemnity to	126
Interpleader by.	179-180
Notice to bring in the body..	157
when out of office	157
Poundage, in what cases	121, 125
Rule <i>nisi</i> in application against, abolished..	156
To make return of execution	126
pay over money	125
What sheriff may take under execution	124-126

SHERIFF.—Continued.

PAGE

<i>See</i> Absent and Absconding Debtors	137-141
Execution	119-128
Capias	131-134
Replevin	134-136

SHOWING CAUSE.

Abolition of rule <i>nisi</i> for new trial ..	114
in certain other cases ..	156

SINGULAR AND PLURAL NUMBER.

Singular number to include plural, and plural to include singular....	208
---	-----

SITTINGS.

Distribution of business ..	9-10
Halifax, civil and criminal	10-11
In other counties..	11-14
Judge may make rules for	18
<i>See</i> Sessions, Sittings, Vacation, &c.	186-192

SLANDER.

Evidence in mitigation of damages	98
Payment into court in	66
Rule 26 of Order 34, not to apply to	97
Slandorous words spoken of any woman, not necessary to prove special damage	61

SOLICITORS.

Acceptance of service and entering appearance....	27
liable to attachment on default...	31
Address of, for service on writ...	24
on memorandum of appearance	30-31
Bound to assist pauper gratuitously	45
Costs of guardian <i>ad litem</i>	198
misconduct	197-198
against, omitting to attend at chambers	161
Disclosure by....	25-26
Interpretation of term	208
Lien not to affect set-off..	198
Not to take affidavit when interested	111
Omitting to put in appearance....	31
give notice of order for discovery	84
Personal liability for costs	196, 197-198
Scale of costs	199
Striking off rolls, no rule <i>nisi</i> in application	156
Signing pleadings...	57

SPECIAL CASE 90-92

Agreement as to payment of money and costs....	91
Application of Order XXXIII	91
Documents, how drawn.	90
Effect of judgment ..	92
Entry for argument	91
Facts and documents to be stated concisely..	90
Form of case without pleadings.	92, 228
entry	277
Formal pleadings may be dispensed with	91-92
In interpleader	181
Inference of fact	90
Judgment according to agreement... ..	92
Married woman party....	91
Order for payment on finding of issue	92
Parties may state special case....	90

SPECIAL CASE.—Continued.

PAGE

Persons under disability	91
Preliminary questions of law	90
Printing case	91
Signature of counsel or solicitor	91
Special case without consent	90
Stated by an official referee	100-101

SPECIAL DAMAGE.

Need not be proved in action for words importing unchaste conduct to a woman	61
--	----

SPECIAL JURY.

Trial with... ..	94
------------------	----

SPECIAL VERDICT.

Judge may direct	17
------------------------	----

SPECIALLY INDORSED WRIT.

Bond, on	23
Bill of exchange, on	23
Cheque, for a	23
Contract, express or implied	23
Debt or liquidated demand	23
Default of appearance, to	33
Forms of special indorsement prescribed	23
the forms	239-243
Guaranty under seal or not	23
Option of plaintiff to issue	23
Promissory note, on	23
Recovery of land, with or without rent or mesue profits	23
Statute, when fixed sum	23
Statement of claim unnecessary	61
Summary judgment under... ..	37
Trust, on a	23
Writ, form of	210-211

SPECIFIC PERFORMANCE.

Enforcement of	123-164
Form of claim	238
defence	257

STATEMENT OF CLAIM.

Account stated to be alleged	62
Admission of part of claim	38
judgment for	38
Alternative relief	62
Amendment of	62-76
by exclusion of part of claim	54
once without leave	76
Contribution, statement to be served with notice of	48-49
Costs of prolix pleadings	56
when unnecessary	62
Delivery of statement of claim	56
in what cases unnecessary	61
rules as to delivery of	61-62
unnecessary in specially indorsed writs	61
Distinct claims to be separately stated	62
Exclusion of part of claim	54
Forms in Appendix to be used	57
of statements, Appendix C.	232-253
Indorsement of writ on	22-24
Issues settled if statement insufficient	88

STATEMENT OF CLAIM.—Continued.

	PAGE
Joinder of joint and separate claims..	40
May be altered without alteration of writ	62
Must show place of trial	62
Place of trial to be stated	62, 92
otherwise to be county in which defendant is to file appearance	92
Relief claimed must be specifically stated	57-62
Settled account, how pleaded in	62
Separate causes of complaint...	62
Specific statements of relief.	62
either simply or alternatively	62
Time for delivery of.	61-62
Unnecessary in certain cases	61
Variation from indorsement.	62
Venue in statement	62, 92
Writ specially indorsed	61

STATUTES.

Of frauds, how pleaded..	58
limitations, how pleaded..	58
not to extend to express trusts	7
Plea of not guilty by statute.	58
Special indorsement, where money to be recovered is fixed	23

STATUTORY DECLARATION.

"Oath" includes...	2
----------------------------	---

STAY OF PROCEEDINGS.

Appeal to court of appeal, no stay of execution or of proceedings except in certain cases...	185
Application for, by any person whether a party or not	6
at any time by motion in a summary way...	6
By payment of debt and costs incurred	23
Court or judge may direct if it seem fit.. . . .	6, 114-115
Deposit of money, &c., on motion for new trial	114-115
Directed at any time	6
Execution, stay of	124
Frivolous or vexatious proceedings	71
Interest, when execution stayed	185
On notice of motion for new trial	114-115
Solicitor's name used without authority	25-26
Where injunction might have been obtained	6

STRIKING OFF ROLLS.

No rule <i>nisi</i> for	156
Notice of motion to state grounds	156
copy of any affidavit to be served with notice	156

STRIKING OUT.

Unnecessary or scandalous matter in pleadings.. . . .	60
tending to embarrass or delay	60
at any stage of proceeding	60
costs may be ordered between solicitor and client	60

SUBPÆNA.

Affidavits of service of, contents of	108
Cross-examination of deponents on.. . . .	107
Chambers for, on order from judge	108
Correction of errors in	108
Costs, no subpœna for	128
Forms of subpœna prescribed	108

SUBPŒNA.—Continued.

	PAGE
Forms. Appendix J.....	283-288
Issue to any party in any cause or matter....	107
Præcipe for to be delivered and filed....	108
Referee, attendance before may be enforced by....	100
Service of within 12 weeks after issue of writ....	108
Service by delivering copy ..	108
Three names in one subpœna or one for each....	108
Witnesses bound to attend on subpœna....	107

SUBSEQUENT PLEADINGS.

Default in.	75
See Reply ..	70

SUBSEQUENT TO ACTION.

Matter how pleaded	70
-------------------------	----

SUBSTITUTED SERVICE.

Affidavit in support of application for	28
Form of order for	297
Notice, order, or document of	206
Summons to proceed	171
Writ of summons of	28

SUIT.

What term includes	I
-------------------------	---

SUMMARY JUDGMENT.

Application for writs specially indorsed	37
by summons returnable 4 clear days after notice	37
affidavit verifying causes of action....	37
stating belief that there is no defence	27
Corporation defendants	37
Defence by affidavit or payment into court	37
as to part, judgment as to other	38
by one defendant, judgment against another	38
Forms of judgment..	291-293
Leave to defend on giving security	38
terms of time and mode of trial ...	38
Recovery of land, in case of	37
Special indorsement, what constitutes	23
Summary judgment, on application	37
unless defendant satisfy court by affidavit or otherwise	37
Summary judgment, unless defendant satisfy court by affidavit or otherwise that there is a good defence to action on merits ...	37
unless defendant discloses facts sufficient to entitle him to defend..	37
Time for delivery of defence	63

SUMMER TERM.

Extra or summer terms	13
Time of sitting of court at summer term.	14

SUMMONS.

Application at chambers to be by notice or ..	159
Form prescribed; the form	161, 288
of order on, prescribed; the form	162, 290
affidavit of service of	230
præcipe for, amended	276
order for dismissal of...	312

SUMMONS.—Continued.

PAGE

Hearing of.. .. .	162
Originating summons.... ..	159
Summons book	172
To proceed	170-172
Various forms of orders and summonses. Appendix K.	288
Writ of summons	22

SUMMONS FOR DIRECTIONS.

78, 79

Costs of application, omitted froms	79
Contents of summons	78
Form of summons	290
Orders thereon	78
form of order	291

SUNDAY.

Lapsing of time on	194
When not counted	194

SUPREME COURT.

How constituted	2
jurisdiction exercised... ..	4
Jurisdiction	3-4
Name of	2
Powers of	4
To be court of record	3
Where, and when shall sit	9-15

SURETY.

Assignment of securities to.. ..	8
----------------------------------	---

TAXATION OF COSTS.

After action brought, form of Order for, Appendix K., No. 40	308
Copies of documents, taking.	201
Inspection of documents	201
Notice of.... ..	199
On default of appearance (liquidated demand)... ..	
On payment by defendant... ..	23
Special allowances and general regulations	200-204
<i>See also</i> Costs	195-204

TAXING AUTHORITY.

Definition of	207
---------------------	-----

TECHNICAL OBJECTION.

Not to be raised to pleading on alleged want of form	60 -
--	------

TENANT FOR LIFE.

Waste by... ..	7
----------------	---

TENDER.

<i>See</i> Payment into Court.	66-69
-------------------------------------	-------

TERMS.

Abolition of, except as measures of time	9
Interpretation of.	I, 207
terms "writ of execution" and "issuing execution against any person".	120
<i>See</i> Sittings, Vacation, &c.	186-192

TESTIMONY.

Action to perpetuate	108-109
----------------------------	---------

TESTING WRITS.

	PAGE
The teste of all writs is abolished	25

THIRD PARTIES.

Appearance by	49
Contribution against co-defendant	40-51
Costs	50
Default of appearance by	49
pleading by	75
Defence by	49
Defendant may bring in	5, 48-49
to counter-claim	64
Execution by and against	123
Form of notice	222-223
Garnishee	129-131
Generally	48-51
Indemnity against	48
Indorsement of defence served on	64
form of	223
Issues affecting	75
Leave to defend	49
Notice to	5, 48-49
Procedure, general	38-51
Questions against, how tried	50
Recovery of land	31-32
Reply to counter-claim by	64
Servicé of counter-claim on	64
Summons to	64
Third party notice	48-49

TIME.

Abridgment or enlargement of	195
costs on	202-203
Affidavits answering interrogatories	80
in evidence by affidavits	113
Amendment :	
counter-claim	76
statement of claim	76
Appeal :	
court of appeal to	183
<i>ex parte</i> application	185
limit of time for	183
Appearance	30-31
out of jurisdiction of writ	29
application to discharge or vary order changing parties	52
Christmas day, when not counted	194
Close of pleadings	70
Computation of time	194-195
for vacations	186-187
Concurrent writs	25
Costs when time extended	202-203
Counter-claim, amendment of	76
reply by third parties to	64
Delivery of pleadings :	
counter-claim	63
defence	63
pleadings, subsequent to reply	70
reply	69
statement of claim	61
Discontinuance, for	72
Enlargement of time	195
costs of	202-203
Entry for trial	95-96

TIME.—Continued.

	PAGE
Essence of contract.:	8-9
Execution	120-122
Expiring when prothonotaries' offices closed	194
Good Friday, when not counted..	194
Inspection of documents, for	82
Interrogatories, affidavit in answer	80
Judgment, for setting aside..	114
Month, means calendar month...	194
Motion for judgment	116
where issues of fact	116
New trial, time for application for ...	114
service of notice of motion for application for.	114
Notice of appeal from interlocutory order....	183
from judgment .	183
by respondent	184
Notice of motion	156
trial	95
on affidavit, evidence	113
to cross-examine, on affidavits	113
Payment into court in satisfaction	66
acceptance by plaintiff	66-67
Service of pleadings, hours for ..	195
on Saturdays..	195
Service of notice of motion for application for new trial.	114
Setting aside judgment on non-appearance at trial....	97
down on motion for judgment....	116
Sessions, vacations and arguments....	186-192
Sunday, when not counted	194
time expiring on....	194
Terms may be referred to as measures of	9
Vacations, sessions, &c.	186-192
Writ of execution, issue of	122
in force for one year	122
summons in force	26

TITLE.

Need not be pleaded in action for land	65
--	----

TITLE, DATE, AND APPLICATION OF RULES.

How cited	21
When Rules come into operation....	21

TRESPASS.

Injunction against	9
Mortgagor in possession suing for ..	7

TRIAL.

Addresses to jury	98
Adjournment of	97
Amendment at ..	76
for trial of real questions	76
Arbitrations	95
Arrest of witness	102
form of warrant to arrest witness	102
Assessors....	18, 100
mode of trial with	100
Authority to refer ...	100
Book to enter findings...	99
certificates in...	99
Cause list, how made up	96
Chambers judge	93
Default at trial by defendant	97

TRIAL.—Continued.	PAGE
Mode of trial: judge may direct	94
order trial of issue by jury.. ..	94
subject to directions of court	94
notice of	94
order to change in certain cases.....	94
New trial.....	114
Non-appearance of defendant.....	97
plaintiff.. ..	97
proving claim.....	97
setting aside judgment on ...	97
place of application	97
time for application	97
Notice of trial:	
affidavit evidence	113
before entry	95
by plaintiff ...	95
dismissal for want of prosecution..	95
by defendant	95
countermanding.....	96
by consent or by leave	96
effect of for sittings	96
Halifax or elsewhere	96
elsewhere than in Halifax	96
form of, provided	95
the form.	228
Halifax, in... ..	96
length of.	95
short.	95
special sittings... ..	97
statements in.	95
to lapse if no entry	96
time for	95
on affidavit evidence.	113
Order of entry for... ..	96
Place of trial....	92
appointed by judge	92
different for different questions	94
statement of claims, plaintiff to name place in... ..	92
Plaintiff not appearing ..	97
Postponement of	97-98
Preliminary question of law	90
fact.	94
Procedure at trial	16-18, 97-100
Reading affidavits... ..	103
answers to interrogatories	84
Referee, by	100
Separate, of distinct causes of action, on order... ..	53
Single judge	95
Sittings, at what	96
Striking out statements which would prevent fair trial	60
Time of trial....	93
Viva voce evidence at	103
in absence of agreement	103
Who may enter for trial	95-96
TRIAL WITHOUT PLEADINGS.. ..	55-56
TRUST.	
Compromise, parties in case of	42
TRUSTEE.	
Application by for directions	169-170
Beneficiary in case of property had on express trust.. ..	7

WILFUL DEFAULT.	PAGE
Form of statement of claim..	233
WITHDRAWAL OF RECORD. <i>See</i> Discontinuance	72
WITNESS.	
Absence of material	97-98
Arrest of	102
Attendance before referee....	100
Examination of before examiner.	103
generally to be <i>viva voce</i>	103
by interrogatories	103
Residing abroad, examination of, opening	106
Restrictions on cross-examination of	98
Rules as to examinations of witnesses residing abroad	106
Subpœna for attendance of	108
Technical objections of witnesses taken <i>de bene esse</i>	106
Under <i>Habeas Corpus</i>	98
<i>See</i> Evidence. Examination of Witnesses.	
WRIT.	
Currency of....	26
Date of in general....	22
Forms....	209-212
Lost, substitution of copy....	26
Order to issue need not be drawn up	158
Renewal of..	26
Teste of, to remain abolished....	22
To bear date of issue	22
WRITS AGAINST ABSENT OR ABSCONDING DEBTORS.	
<i>See</i> Absent or Absconding Debtors	137-141
Foreign Companies, suits against	141-143
WRIT OF ATTACHMENT.	
<i>See</i> Attachment of Person	129
WRIT OF DELIVERY.	
<i>See</i> Delivery, Writ of....	146-147
WRIT OF EXECUTION.	
<i>See</i> Execution	119-128
WRIT OF ENQUIRY.	
On default of appearance in certain cases....	33-34
pleadings.	73-74
Proceedings at trial of.	101-102
Substitution of inquiry before officer	102
<i>See</i> Inquiry.	
WRIT OF MANDAMUS.	
<i>See</i> Mandamus	159
WRIT OF POSSESSION (Lands).	
Form of præcipe for	274
writ	282
To have effect of writ of assistance, as well as of writ of <i>habere facias possessionem</i>	146
WRIT OF PROHIBITION.	
Form of præcipe....	275
<i>See</i> Prohibition.. . . .	206

WRIT OF SEQUESTRATION.

PAGE

Effect same as writ of, had in England before commencement of English Judicature Act	128
Form of præcipe for writ for	273
See Sequestration.	280

WRIT OF SUMMONS

Action to be commenced by	22
Date and teste of	22
Form and contents of, and costs of undue prolixity	22
Forms	209-212
Writs for service abroad.	22
form of	211-212
Address :	
of plaintiff and solicitor	24
in person	24
Indorsement, of claim :	
action for account	24
amendment	62-76
form prescribed	22-23
forms	216-222
nature and requisites of	22
parties in representative capacity	23
special indorsements	23

Issue :

concurrent writs	25
disclosure by solicitor of authority to issue	25-26
of names of partners when issued by firm	143
filing copy	25
place of issue	24
preparation of writ	24
sealing and issue	24

Renewal :

currency of writ	26
loss of writ	26
renewal	26

Service :

affidavit for leave for substituted	28
of service to mention day of	28
in action to recover land—vacant possession.	28
indorsement of service	28
on corporation or society	27
husband and wife	27
infant or lunatic	27
partners or apparent firm	143-144
third party	48-49
parties subsequently added	43
personal service	27
substituted service	27
undertaking by solicitor to accept	27

Service out of jurisdiction :

affidavit for leave	29
form of order for	296
in what cases allowed	28-29
mode of giving notice	30
notice in lieu of writ, when to be served	30
time for appearance	29

APPENDIX A.

•

CROWN RULES.

SUPREME COURT RULES (CROWN SIDE).

IN THE SUPREME COURT OF NOVA SCOTIA.

The Judges of the Supreme Court of Nova Scotia, at a meeting called for that purpose, do hereby, in pursuance and execution of the powers and authorities enabling them in that behalf, order and direct in the following manner :

1. All existing rules or practice on the Crown side inconsistent with these rules are hereby repealed, and the following Rules shall henceforth be in force.

2. No order or rule annulled by any former order shall be revived by any of these Rules, unless expressly so declared, and where no other provision is made by these Rules, the present procedure and practice remain in force.

CUSTODY OF RECORDS.

3. The Clerk of the Crown in each county shall have the care and custody of the records and other proceedings on the Crown side in that county.

DATE OF PROCEEDINGS.

4. Every order and other proceeding on the Crown side shall be dated of the day of the month and year on which the same was made, unless the court or a judge shall otherwise direct, and shall take effect accordingly.

AFFIDAVITS.

5. Order XXXVI (affidavits and depositions) of the Rules of the Supreme Court shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

The following rules shall apply to all proceedings on the Crown side :

6. Upon any motion or summons evidence may be given by affidavit: but the court or a judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

7. Affidavits used on the Crown side shall be intituled "In the Supreme Court, Crown Side."

8. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

9. Affidavits sworn in Nova Scotia shall be sworn before a judge, commissioner or officer empowered by Statute or under the Rules of the Supreme Court to administer oaths.

10. Every commissioner shall express the time when, and the place where, he shall take any affidavit or recognizance; otherwise the same shall not be admitted to be filed or read without the leave of the Court or Judge; and every such commissioner shall express the time when, and the place where, he shall do any other act incident to his office.

11. All affidavits, declarations and affirmations in causes or matters depending on the Crown side, may be sworn and taken in the United Kingdom of Great Britain and Ireland, or the Channel Islands, or in any Province of Canada, or in any colony, island, plantation, or place under the dominion of Her Majesty, or in foreign countries, before any judge, court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign countries out of Her Majesty's dominions; and the judges and other officers of the Supreme Court shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such affidavits, affirmations, declarations, or to any other document.

12. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every

paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed book-wise. No costs shall be allowed for any affidavit or part of affidavit substantially departing from this rule.

13. Every affidavit shall state the description and true place of abode of the deponent.

14. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

15. Every affidavit used on the Crown side shall be filed in the office of the Clerk of the Crown. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the court or a judge shall otherwise direct.

16. The court or a judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

17. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the court or a judge, be read or made use of in any matter depending in court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

18. Where an affidavit is sworn by any person who appears to the officers taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the court or a judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

19. The court or a judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

20. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in court or in chambers. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated by the Clerk of the Crown.

21. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

22. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner.

23. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the court or a judge.

24. Except by leave of the court or a judge, no order made *ex parte* in court founded on any affidavit shall be of any force, unless the affidavit on which the application was made was actually made before the order was applied for, and produced and filed at the time of making the motion.

25. Upon motion founded upon affidavits, either party may apply to the court or a judge for leave to make additional affidavits upon any new matter arising out of the affidavits of the opposite party; but no additional affidavits shall be used except such leave shall have been first obtained.

26. Affidavits of service shall state when, where and how, and by whom, such service was effected.

CERTIORARI.

27. Writs of *certiorari* may be allowed for removing proceedings into this court on motion to the court or a

judge. Notice in writing of the time and place of making such motion shall be served on the opposite party at least four days before the motion is made, together with a copy of the affidavits and exhibits to be used on said motion.

28. The party intending to apply for a writ of *certiorari* shall, before giving notice thereof, file in the office of the Clerk of the Crown of the county where the writ is to be made returnable, a recognizance with two sureties in the sum of two hundred dollars, with condition to prosecute the *certiorari* with effect and without any wilful or affected delay, and to respond the judgment which shall be finally given in the matter, and pay such costs as the court or a judge shall order. Such recognizance shall be entered into before a commissioner of this court, and the sureties shall justify before a commissioner. The recognizance shall, as nearly as may be, be in the form No. 4 in the appendix to these rules.

29. No notice of motion for a writ of *certiorari* shall be effectual, nor shall any writ be granted thereon, unless the recognizance and affidavits of justification shall have been filed, as prescribed by the preceding section, before the notice was given, and the same verified by affidavit.

30. No writ of *certiorari* shall be granted, issued or allowed to remove any judgment, order, conviction, or other proceeding had or made by or before any judge of the County Court, stipendiary magistrate, or justice or justices of the peace of any county, district, city, town corporate, or liberty, unless such writ of *certiorari* be applied for within six calendar months next after such judgment, order, conviction, or other proceeding shall be so had or made, and unless it be proved by affidavit that the party suing forth the same has given four days' notice thereof in writing to the judge, magistrate, justice or justices, or to two of them, if more than one, by and before whom such judgment, order, conviction, or other proceedings shall be so had or made, in order that such judge, magistrate, justice or justices, may show cause, if he or they shall so think fit, against the granting, issuing or allowing such writ of *certiorari*.

31. No order for the issuing of a writ of *certiorari* to remove any order, conviction, or inquisition, or record, or writ of *habeas corpus ad subjiciendum* shall be granted where the validity of any warrant, commitment, order, conviction, inquisition, or record shall be questioned,

unless at the time of moving a copy of any such warrant, commitment, order, conviction, inquisition, or record, verified by affidavit, be produced, or the absence thereof accounted for to the satisfaction of the court or a judge.

32. When cause is shown against the motion for a writ of *certiorari* to remove any judgment, order or conviction, the court or a judge, if he or they shall think fit, may make it a part of the order for the *certiorari* that the judgment, order or conviction shall be quashed on return without further order.

33. No objection on account of any omission or mistake in any judgment or order brought up upon a return to a writ of *certiorari* shall be allowed, unless such omission or mistake shall have been specified in the notice of the motion for such *certiorari*.

34. If the motion for a writ of *certiorari* to remove any order, judgment or conviction into this court, or to quash the same after removal, is opposed, the unsuccessful party shall pay the opposite party his costs of the motion, to be taxed, unless the court or a judge shall otherwise order. But in criminal proceedings if such motion is unopposed the party moving shall recover no costs.

35. The writ of *certiorari* to remove a judgment, conviction or order shall be, as nearly as may be, in the form No. 7 in the appendix to these rules.

36. The court or a judge may direct further or additional security to be given before the writ shall issue.

37. If the person on whose behalf application is made for a *certiorari* to remove a judgment, conviction or order is in custody under any warrant or other process issued thereon, the court or a judge may, in granting the order for the writ of *certiorari*, or at any time after said order is granted, after notice of the application to the opposite party, order him to be discharged from custody, on his giving such security as the court or judge shall direct, that if the said judgment, conviction or order is confirmed or the writ of *certiorari* quashed, he will comply with the provisions thereof and pay the fine or penalty imposed, and in case of imprisonment without fine that he will forthwith surrender himself into the same custody and undergo the remainder of his imprisonment, notwithstanding the term limited for his imprison-

ment shall have expired. If the recognizance shall be forfeited, a warrant for the apprehension of the defendant may be granted by a judge, which shall authorize his arrest and imprisonment for the unexpired term.

INFORMATIONS, INDICTMENTS, &C.

38. Every indictment found by the grand jury in the Supreme Court, may, if necessary, be certified to a judge, in order that such judge may (if he thinks proper) immediately issue his warrant for the apprehending of the defendant.

39. If any defendant in any information depending in the Supreme Court shall be committed to prison, and detained for want of bail for his appearance to such information until the end of the sittings next following such commitment, and the prosecutor of such information shall not proceed within that time, such defendant shall, after the expiration thereof, be discharged by order of the court or a judge, upon entering a common appearance to the said information (unless good cause shall be shown to the contrary); eight days' notice shall be given by the defendant or his solicitor of his intention to apply for such order.

40. If any such defendant is convicted upon any such information as in the last preceding rule mentioned, and is afterwards committed or detained for want of bail, the prosecutor shall cause him to be brought up for judgment within eight days after the time limited by Rule 112, for moving for a new trial if the court be then sitting, and if the court be not sitting, within the first eight days of the sittings next after that in which the trial was had, and in default of his doing so within that time, or within such further time as may have been granted by the court or a judge for that purpose, the defendant may, on application to the court, be discharged on his own recognizance.

41. With the exception of *ex-officio* informations filed by the Attorney-General on behalf of the Crown, no criminal information or information in the nature of a *quo warranto* shall be exhibited, received, or filed without express order of the court, nor shall any process be issued upon any information other than an *ex-officio* information, until the person procuring such information to be exhibited shall have filed at the office of the clerk

of the Crown a recognizance with two sureties who shall justify by affidavit in the penalty of \$200 effectually to prosecute such information, and to abide by and observe such orders as the court shall direct, such recognizance to be entered into before a commissioner of the Supreme Court.

42. No application shall be made for a criminal information against a justice of the peace, stipendiary magistrate or police magistrate, for misconduct in his magisterial capacity unless a notice containing a distinct statement of the grievances, or acts of misconduct complained of, be served personally upon him, or left at his residence with some member of his household, six days before the time named in it for making the application.

43. The application for a criminal information shall be made to the Supreme Court by a motion after ten days' notice thereof in writing, and within a reasonable time after the offence complained of, and if the application be made against a magistrate or justice of the peace for misconduct in his magisterial capacity, the applicant must depose on affidavit to his belief that the defendant was actuated by corrupt motives, and further, if for an unjust conviction, that the defendant is innocent of the charge.

44. If the prosecutor on any information not *ex-officio* does not proceed to trial within a year after issue joined, or if the prosecutor causes a *nolle prosequi* to be entered, or if the defendant be acquitted (unless the judge at the time of trial certifies that there was reasonable cause for the information), the court, on motion for the same, may award the defendant his costs to the amount of the recognizance entered into by the prosecutor on filing the information.

45. If on any indictment or information in the Supreme Court by a private prosecutor for the publication of any defamatory libel, judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information, and upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea.

QUO WARRANTO.

46. Every application for an information in the nature of a *quo warranto* shall be by motion to the court after ten days' notice in writing, unless the same be *ex-officio*.

47. The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application, and the applicant shall deliver with the notice, on service thereof, a copy of the affidavits whereby the application will be supported.

48. No order for filing any information in the nature of a *quo warranto* shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon oath that such motion is made at his instance as relator; and such person shall be deemed to be the relator in case such order shall be made, and shall be named as such relator in such information in case the same shall be filed, unless the court otherwise orders.

49. Every objection intended to be made to the title of a defendant on an information in the nature of a *quo warranto*, shall be specified in the notice of motion, and no objection not so specified shall be raised by the relator on the pleadings without the special leave of the court or a judge.

50. The court may refuse the motion for an information in the nature of a *quo warranto* with or without costs, and in its discretion may, upon such notice as may be just, direct the costs to be paid by the solicitor or other parties joined in the affidavits in support of the application, although he be not the proposed relator.

51. A new relator may, by leave of the court, on notice of motion, be substituted for the one who first enters into the recognizance on special circumstances being shown.

52. Where several notices of motion for information in the nature of *quo warranto* have been given against several persons for the usurpation of the same offices, and all upon the same grounds of objection, the court may order such motions to be consolidated, and only one information to be filed in respect of all of them, or may order all proceedings to be stayed upon all but one, until judgment be given in that one, provided always that no

order be made to consolidate or stay any proceedings against any defendant unless he give an undertaking to disclaim, if judgment be given for the Crown upon the information which proceeds.

53. If a defendant on an information in the nature of *quo warranto* does not intend to defend, he may, to prevent judgment by default, enter a disclaimer at the office of the Clerk of the Crown, and file a copy there, and deliver another copy to the relator or his solicitor. Upon the disclaimer being filed, judgment of ouster may be entered and the costs taxed as in judgment by default.

MANDAMUS.

54. Application for a prerogative writ of *mandamus* shall, during the session, be made to the court after ten days' notice of the motion, and in the vacation to a judge in chambers for a summons to show cause, upon its being shown to the satisfaction of such judge that the matter is urgent.

55. Notice shall be given of the motion for a *mandamus* to every person who, by the affidavits on which the motion is made, shall appear to be interested or likely to be affected by the proceedings. The court or a judge may direct notice to be given to any other person or persons, and adjourn the hearing for that purpose.

56. Any person, whether he has had notice or not, who can make it appear to the court or a judge that he is affected by the proceeding for a writ of *mandamus*, may show cause against the motion or summons, and shall be liable to costs in the discretion of the court or a judge, if the order should be made or the prosecutor obtain judgment.

57. The order for a *mandamus* need not be served, but the cost of service of the order may be allowed, in the discretion of the taxing officer, where the writ is not issued.

58. If the writ of *mandamus* is directed to one person only, the original must be personally served upon such person, but if the writ be directed to more than one, the original shall be shown to each one at the time of service, and a copy served on all but one, and the original delivered to such one.

59. When a writ of *mandamus* is directed to companies, corporations, justices, or public bodies, service shall be made upon such and so many persons as are competent to do the act required to be done, the original being delivered to one of such persons, except where by statute service on the clerk or some other officer is made sufficient service.

60. The court or a judge may, if they or he shall think fit, order that any writ of *mandamus* shall be peremptory in the first instance.

61. Every writ of *mandamus* shall bear date on the day when it is issued. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the court thinks fit. A writ of *mandamus* shall be in the form in the Appendix No. 20, with such variations as circumstances may require.

62. Any person by law compellable to make any return to a writ of *mandamus* shall make his return to the first writ.

63. Where a point of law is raised in answer to a return or any other pleading in *mandamus*, and there is no issue of fact to be decided, the court shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required.

64. Where, under Rules 63 and 96, the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of *mandamus* to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

65. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of *mandamus* issued by the Supreme Court or any judge thereof.

66. When it appears to the court that the respondent claims no right or interest in the subject matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed, and if the court thinks fit so to order, may be expressed to be made on behalf of the persons really interested therein.

In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

67. Where, under the last preceding Rule, the return to a writ of *mandamus* is expressed to be made on behalf of some person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

68. In any case of *mandamus*, in which a proceeding by way of interpleader may be proper, the provisions of Order LVI. of the Rules of the Supreme Court, (interpleader), shall be applicable, so far as the nature of the case will admit.

69. No order for the issuing of any writ of *mandamus* shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon oath that such motion is made at his instance as prosecutor, and if the writ be granted the name of such person shall be indorsed on the writ as the person at whose instance it is granted.

ORDERS IN THE NATURE OF MANDAMUS.

70. An application for an order in the nature of a *mandamus*, to justices, or to a county court judge, or to any magistrate, shall be by notice of motion for an order, in the same manner as is provided in Rule 54.

PROHIBITION.

71. An application for a writ of prohibition on the Crown side shall be made to the court after two days' notice of motion in all criminal causes or matters; and in civil proceedings on the Crown side by a similar motion or by summons before a judge at chambers.

72. The order may be made *ex parte* in the first instance on special circumstances being shown, in the discretion of the court or judge.

APPEARANCE TO INDICTMENT, INFORMATION AND
INQUISITION.

73. A defendant to any information or inquisition in the Supreme Court must enter or cause to be entered an appearance to such information or inquisition at the office of the Clerk of the Crown.

74. As against any defendant to any indictment, information, or inquisition, the prosecutor may obtain a certificate from the Clerk of the Crown of an indictment, information, or inquisition having been filed. The certificate may be in Form No. 23, or to the like effect.

75. Upon production of such certificate to a judge, such judge may, if necessary, issue a warrant under his hand to apprehend the defendant and cause him to be brought before him or some other judge, or before a justice of the peace, to be dealt with according to law; the warrant may be in Form No. 24 or 25, or to the like effect.

76. If it be proved upon oath before such judge or justice of the peace, that the person apprehended and brought before him is the person charged and named in such indictment, information, or inquisition, such judge or justice of the peace shall, without further inquiry or examination, commit him to prison by a warrant, which may be in the Form No. 26, or to the like effect, or admit him to bail.

Provided that nothing in these Rules shall affect the jurisdiction of a judge to admit any defendant to bail at any time after committal, and before conviction, if he shall, in his discretion, so think fit.

77. When any information is filed and the defendant does not enter an appearance, the prosecutor may serve a notice upon the defendant to appear within five days, and in default of appearance may move the court *ex parte* for leave to enter an appearance for him, or if the notice was personally served for an attachment.

78. If the defendant on any indictment, inquisition or misdemeanor, or information, wishes to avoid arrest

upon a warrant, he may give 24 hours' notice of bail to the prosecutor, and enter into a recognizance before a judge, or justice of the peace, with sufficient surety, or sureties, to appear and answer the indictment, inquisition, or information, and personally appear at the trial, and not depart without leave of the court.

79. If the defendant be taken on a warrant he shall give 24 hours' notice of bail, and enter into a recognizance as in the last preceding rule mentioned before he can be discharged.

80. If any defendant to an indictment, inquisition for misdemeanor, or information, shall be detained in any prison for want of bail, the prosecutor of any such indictment, inquisition, or information, may cause a copy thereof to be delivered to the gaoler of the prison for such defendant, with a notice indorsed thereon, that if the defendant do not within eight days after such delivery cause an appearance and a plea, or demurrer, to be entered to such indictment, inquisition, or information, an appearance and plea of not guilty will be entered for him; and if the defendant do not enter such appearance and plea, or demurrer, within eight days from the delivery of such copy of the indictment, inquisition, or information and notice, the prosecutor, upon filing an affidavit of the delivery of such copy and notices indorsed thereon to the keeper or gaoler, as aforesaid, may cause an appearance and plea of not guilty to be entered in the indictment, inquisition, or information for the defendant and proceedings shall be had thereon as if the defendant himself had duly appeared and entered such plea.

81. The process against a body corporate or a municipality to compel an appearance shall be by writs of *venire facias* and *distringas*. If such defendants do not appear within four days after the sheriff has returned that he has distrained the defendants' land and chattels, alias and pluries writs of *distringas* may be issued with such increased amounts upon each succeeding writ as the court or judge may order.

81a. On the trial of every indictment for a criminal offence under the Criminal Code, 1892, the accused shall be placed at the bar and the form of procedure used, and the oaths administered to the jurors and witnesses, shall be the same as those formerly used and administered on trials for felony. July 4, 1893.

BAIL.

82. Applications for bail in felony, or misdemeanor, where the party is in custody, shall be by summons before a judge at chambers to show cause why the defendant should not be admitted to bail, either before a judge at chambers, or before a justice of the peace, in such an amount as the judge may direct.

RECOGNIZANCE.

83. Every recognizance shall after the acknowledgment thereof be transmitted to the office of the Clerk of the Crown in the county in which the proceedings are instituted, and filed there.

84. No recognizance shall henceforth be forfeited, estreated, or put upon the estreat roll without the order of the court or a judge, nor unless an order or notice shall have been previously served upon the parties by whom such recognizance shall have been given, calling upon them to perform the conditions thereof, and no default shall be considered to be made in performing the conditions of a recognizance by reason of the trial of any information or indictment, or the argument of any order or conviction or other proceedings, having stood over by order of the court, or by consent in writing of the parties.

85. Every recognizance to appear and answer to any indictment or to any *ex-officio* or criminal information, shall, unless the court or a judge shall by order dispense therewith, contain, besides any other condition which may be imposed, a condition that the defendant shall personally appear from day to day on the trial of such indictment or information, and not depart until he shall be discharged by the court before whom such trial shall be had.

86. Whenever it has been made to appear to the court or a judge that a party has made default in performing the conditions of any recognizance into which he has entered, filed in the office of the Clerk of the Crown, the court or a judge, upon notice to the defendant and his sureties, if any, may order such recognizance to be estreated without issuing any writ of *scire facias*. The further proceedings to estreat the recognizance and collect the amount thereof, shall be under the provisions of Chapter 179, Revised Statutes of Canada.

87. Nothing in these rules contained shall be construed to affect, alter or modify the provisions of Chapter

179, Revised Statutes of Canada, or of Chapter 184 of the Revised Statutes of Nova Scotia, 1900, where the same are applicable.

SCIRE FACIAS.

88. No proceedings shall be taken on the Crown side of the Supreme Court by *scire facias* upon recognizance.

PLEADINGS.

(a)—*Pleadings on Indictment, Information or Inquisition.*

89. Every pleading other than a plea of guilty or not guilty to an indictment, information, or inquisition, shall be intituled in the Supreme Court, Crown Side, and shall be dated of the day of the month and the year when the same was pleaded, and shall bear no other time or date. It shall be written or printed on paper, and a copy shall be delivered to the opposite party, and be filed at the office of the Clerk of the Crown.

90. All the proceedings shall be entered on the record made up for trial, and on the judgment roll, under the date of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge.

91. Every special plea, or demurrer, shall be in writing, and shall be signed by the solicitor or the party if he defends in person.

92. One order only to plead, reply, rejoin, join in demurrer, or in error, or plead subsequent pleadings, in all prosecutions by way of indictment, inquisition or information, shall be given, and such order may be drawn up and served as well during the sittings as in vacation; and every such order shall expire as follows, that is to say: Every order to plead, in ten days next after service thereof, unless the time be extended by order of the court, or a judge; and every order to reply, rejoin, join in demurrer, or in error, or plead subsequent pleadings, in eight days next after service thereof, unless the time be extended as aforesaid. On the appearance of a defendant to any indictment, inquisition, or information, an order to plead may be obtained *ex parte*.

93. Time in which to plead may be extended on application by summons to a judge at chambers, upon such

terms and for such time as the judge in his discretion may think fit.

(b)—*Pleadings in Quo Warranto.*

94. When any information in the nature of *quo warranto* has been filed, the defendant may plead to such information within such time, and in like manner, as if the information were a statement of claim delivered in an action, and subject to these Rules, this pleading, and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action, and where the judgment is for the relator judgment of ouster may be entered for him in all cases.

95. The prosecutor in answer to a plea that the defendant has held and executed the office or franchise for six years before the exhibiting the information, may reply any forfeiture, surrender, or avoidance by the defendant within the said six years.

(c)—*Pleadings in Mandamus.*

96. When any return is made to the first writ of mandamus, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action: and subject to these Rules, this pleading, and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action.

(d)—*Pleadings in Prohibition.*

97. Where pleadings in prohibition are ordered, the pleadings, and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages.

COPIES OF PROCEEDINGS AND SERVICE.

98. Copies of all informations or indictments, and of all pleadings thereupon, and of mandamus and return, and traverse, or other pleadings thereupon, and of convictions, orders, and every other proceeding, filed in the office of the Clerk of the Crown shall, when required, be made at his office and delivered to the respective parties or other parties requiring the same on payment of the proper charges.

99. When under these Rules, service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication, is not directed to be personal, service at the last known place of abode or business, with a clerk, wife, or servant, or upon such other person, or in such other manner as the court or a judge may direct, shall be deemed to be a sufficient service.

SPECIAL CASES AND DEMURRERS.

100. Order XXXIII of the Rules of the Supreme Court, (special case) shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

The following Rules shall apply to all criminal proceedings on the Crown side:—

101. Demurrers and special cases shall be entered for hearing at the request of either party without any order for a *concilium*, seven clear days before the first day of the session of the Supreme Court *in banco* at Halifax, or on any entry day during the session, and notice thereof shall be given forthwith to the opposite party.

PAPER BOOKS.

102. Rule twenty-three of Order LVIII of the Rules of the Supreme Court, shall, as far as it is applicable, apply to all proceedings on the Crown side.

103. All books shall be filed at least two days before the argument, and in default the case shall be struck out, unless otherwise ordered.

NOTICE OF TRIAL.

104. Notice of trial shall state the place at which the trial is to be had, and the day on or after which the record is to be tried.

105. If the prosecutor or relator does not, within six weeks after issue joined, or within such extended time as the court or a judge may allow, give notice of trial, the defendant may give such notice.

106. Ten days' notice of trial shall be given in all cases, unless a longer notice shall be ordered by the court or a judge, or the party to whom it is given shall consent to take short notice of trial, which shall be understood to mean four days' notice, or any longer period.

107. Notice of trial for Halifax shall not be, or operate as for any particular sittings, but shall be deemed to be for the day stated in the notice, or for any day after the expiration of the notice, on which the record may come on for trial.

108. Notice of trial elsewhere than in Halifax shall be deemed to be for the first day of the then next term at the place for which notice of trial is given.

109. No notice of trial shall be countermanded, and no record withdrawn, except by leave of the court or a judge, which leave may be given subject to such terms as to costs or otherwise as may be just.

CONTINUANCES.

110. No continuance by way of *imparlance*, *curia advisari vult*, *vicecomès non misit brève*, or otherwise, shall be necessary, nor shall any entry thereof be made upon any record or roll whatever, or in the pleadings.

NEW TRIAL.

111. Applications for a new trial, where such applications may by law be made, shall be by motion to the court *in banc* after notice.

112. Notice of the motion shall state the grounds and be given within twenty-four hours after the trial, and the motion shall in all cases be made within the first four days of the following general or special session of the court at Halifax. The time in either case may be extended by the court or a judge.

113. When notice of motion for a new trial has been given the further proceedings on the verdict or judgment may be stayed, until the decision on such motion by the court or the judge who presided at the trial, on such terms as the court or a judge may think fit.

114. The applicant for such new trial shall in all cases be entitled to an order so staying the proceedings on remaining in custody or on filing a recognizance with two sureties, who shall justify, in such reasonable amount as the court or the judge shall direct, to appear before the court to receive sentence when required, and to pay such fine, penalty and costs, as may be adjudged against him.

115. On motion for a new trial the presence of the defendant or defendants will not be required, unless the court shall otherwise order.

JUDGMENT BY DEFAULT.

116. In case no plea, replication, rejoinder, joinder in demurrer, or other pleading shall be entered within the time limited, judgment as for want of such pleading may be entered at the opening of the office on the next following morning after the expiration of the time limited, upon filing an affidavit of service of the order to plead, reply, &c., as the case may be, unless an order of the court or a judge extending such time shall have been obtained and served, in which case judgment shall not be signed until the day after the expiration of the time granted by such order.

JUDGMENT.

117. On all trials for misdemeanors in the Supreme Court, except upon information filed by leave of the court and *ex-officio* informations where the Attorney-General prays that the judgment may be postponed, judgment may be pronounced during the sittings at which the trial has taken place by the judge before whom the verdict has been taken, as well upon the defendant who has suffered judgment by default or confession as upon those who have been tried and convicted, and whether such persons be present or not in court.

118. The judge before whom the trial is had may either issue an immediate order or warrant, for committing the defendant in execution, or respite the execution of the judgment, on such terms as he thinks fit, and for such time as is necessary, for the purpose of enabling the defendant to move for a new trial, or in arrest of judgment, and if imprisonment is part of the sentence, may order the period of imprisonment to commence on the day on which the party is actually taken to and confined in prison.

119. If a defendant is convicted and not sentenced at the trial, and is not under recognizance or under sufficient recognizance to appear to receive the sentence of the court, or if it is made to appear on affidavit, or otherwise, that he is likely to abscond, a judge's warrant may be obtained at any time after verdict and before final judgment, and either from the judge at the trial or from

a judge at chambers, to hold him to bail, or to require him to give such further bail as the judge in his discretion thinks fit, upon a certificate, if he is not under recognizance, of the conviction, and a certificate of his not being under recognizance, to be obtained from the Clerk of the Crown, or if he is under recognizance, upon a certificate of conviction, and an affidavit of facts showing the necessity of further bail.

120. If judgment is for the Crown, or the prosecutor, and the defendant is not under recognizance to appear to receive sentence, he may be served with a four days' notice to appear on a certain day to receive the sentence of the court, or the prosecutor may issue a writ of *capias ad satisfaciendum* to take the defendant, to remain in custody without bail, or mainprize, until he satisfies the judgment or obtains his discharge.

121. If the defendant is not in custody and is under recognizance to appear to receive sentence, the defendant and his bail may be served with a four days' notice, that on a day named therein the court will be moved for judgment. Such service need not be personal.

122. On moving for final judgment, and if the defendant does not answer on being called three times, the prosecutor, on an affidavit of service of notice, may move under Rule 86 to estreat the recognizance, and upon the estreat of the recognizance a judge may grant a bench warrant for the apprehension of the defendant.

123. The court on giving final judgment, or the court *in banc* on affirmance may, if they so think fit, on the application of the defendant then present, respite the execution of the judgment for such time as is necessary for the defendant to obtain the Attorney-General's fiat for a writ of error, or appeal to the Supreme Court of Canada, upon the defendant entering into a recognizance with two sufficient securities, upon such terms as the court orders, to render himself into custody, or to prosecute his writ of error or appeal with effect, and may order the period of imprisonment, if that is part of the sentence, to commence on the day on which the person shall be actually taken to and confined in prison.

124. When any defendant, after verdict, is brought up for sentence on any indictment or information, the affidavits produced on the part of the defendant, if any, shall be read, and then any affidavits produced on the

part of the prosecution, after which the counsel for the defendant shall be heard, and lastly, the counsel for the prosecution.

125. When any defendant is brought up for sentence after judgment by default, confession, or retraxit, the prosecutor's affidavits shall be first read, then the defendant's affidavits, after which the counsel for the prosecution shall be heard, and lastly the counsel for the defendant.

126. If no affidavits are produced the counsel for the defendant shall be first heard, and then the counsel for the prosecutor.

APPEALS.

127. Order LVII of the Rules of the Supreme Court (appeals) shall apply to all civil proceedings on the Crown side, including mandamus, prohibition and *quo warranto*.

128. Order LVII of the Rules of the Supreme Court (appeals) shall, so far as applicable, apply to criminal proceedings on *certiorari* on the Crown side.

EXECUTION.

129. Order XL of the Rules of the Supreme Court (execution) shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

The following Rules shall apply to all criminal proceedings on the Crown side:—

130. A judgment or order requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

131. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the proceeding and the date of the judgment or order on which it is founded, the names of the parties against whom the execution is to be issued, and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing, if he do so in person.

132. Every writ of execution shall be indorsed with the name and place of abode, or office of business, of the solicitor actually suing out the same; and when the

solicitor actually suing out the writ sues out the same as agent for another solicitor, the name and place of abode of such other solicitor shall be indorsed upon the writ, and in case no solicitor is employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the party in person, mentioning the city or town, and also the name of the street, and number of the house of such residence, if any such there be.

133. Every writ of execution shall be made returnable immediately after the execution thereof.

134. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution over and above the sum required.

135. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered, with interest at the rate of six per cent. per annum, from the time when the judgment was entered up, or from the date of the order.

136. Every person to whom any sum of money or any costs shall be payable under a judgment shall immediately after the time when the judgment was duly entered be entitled to sue out one or more writ or writs of execution to enforce payment thereof in the form used by this court in civil proceedings, or as near thereto as practicable.

137. Every order of the court or a judge in any cause or matter may be enforced in the same manner as a judgment to that effect.

138. A writ of execution, if unexecuted, shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the court or a judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the court, bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the court; and a writ of execution so re-

newed shall have effect and be entitled to priority according to the time of the original delivery thereof.

139. The production of a writ of execution or the notice renewing the same, purporting to be marked with such seal as in the next preceding Rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

140. Writs of execution shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed in civil proceedings.

WRITS.

141. All writs on the Crown side shall be issued at the office of the Clerk of the Crown, and shall be signed by him and sealed with the seal of the court.

142. Every writ shall be prepared by the solicitor or party suing out the same. Every writ shall, before being issued, be indorsed with the name and address of such solicitor and party; and, if sued out by the solicitor as agent, with the name and address of the principal solicitor also. With the exception of writs of *subpœna ad testificandum*, all writs issued shall be entered in a book to be kept for the purpose by the Clerk of the Crown.

143. The teste of all writs shall be abolished, and every writ except as hereinafter by these Rules provided shall bear date on the day on which the same shall be issued.

144. Every writ, unless by these Rules otherwise provided, when returnable to the Supreme Court shall be made returnable forthwith; and such of the aforesaid writs as may be made returnable at chambers shall be made returnable forthwith before a judge at chambers, unless otherwise ordered; provided that every writ of *habeas corpus ad subjiciendum* shall be made returnable immediately.

145. Every order to return a writ shall require such return to be made within four days next after service of such order, if served in Halifax, and within eight days in all other cases. Every writ returnable in court shall, together with the return thereto, be filed in the office of the Clerk of the Crown, and every writ returnable before a judge shall after the decision of the judge thereon, be

so filed, with the return and any order made thereon, or a copy of such order; provided that any writ of *certiorari* to remove inquisitions and depositions taken before a justice of the peace, or a coroner, upon the commitment of any person charged with any offence, shall, as soon as the court or a judge shall have exercised their or his discretion thereon, be transmitted to the person from whom they have been received.

146. Every writ to compel an appearance shall require the appearance to be entered on a day certain, and in case no appearance shall be entered at the end of four days, exclusive of the return day thereof, further process may issue to compel an appearance, which further process shall be dated on the return day of the previous process; and every writ of *capias ad satisfaciendum* shall have eight days at least between such date and return.

HABEAS CORPUS.

(a)—*Ad Subjiciendum.*

147. An application for a writ of *habeas corpus ad subjiciendum* may be made to the court or a judge.

148. If made to the court the application shall be by motion for an order, which if the court so direct may be made absolute *ex parte* for the writ to issue in the first instance; or if the court so direct they may grant an order *nisi*.

149. If made to a judge he may order the writ to issue *ex parte* in the first instance or may direct a summons for the writ to issue.

150. Provided that no application for a writ of *habeas corpus* on a warrant of extradition shall be made to a judge at chambers during the session of the court.

151. The writ of *habeas corpus* shall be served personally, if possible, upon the party to whom it is directed; or, if not possible, or if the writ be directed to a gaoler or other public official, by leaving it with a servant or agent of the person confining or restraining, at the place where the prisoner is confined or restrained, and if the writ be directed to more than one person, the original delivered to or left with such principal person, and copies served or left on each of the other persons in the same manner as the writ,

152. If a writ of *habeas corpus* be disobeyed by the person to whom it is directed, application may be made to the court, on an affidavit of service and disobedience, for an attachment for contempt. In vacation an application may be made to a judge in chambers, for a warrant for the apprehension of the person in contempt to be brought before him, or some other judge, to be bound over to appear in court at the next ensuing sittings, to answer for his contempt, or to be committed to the county gaol for want of bail.

153. The return to the writ of *habeas corpus* shall contain a copy of all the causes of the prisoner's detainer indorsed on the writ, or on a separate schedule annexed to it.

154. The return may be amended or another substituted for it by leave of the court or a judge.

155. When a return to the writ of *habeas corpus* is made, the return shall first be made, and motion then made for discharging or remanding the prisoner, or amending or quashing the return.

156. On the argument of an order *nisi* or summons for a writ of *habeas corpus* the court or a judge may in his or their discretion direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ, which order shall be a sufficient warrant for any gaoler or constable, or other person, for his discharge.

(b)—*Other Writs of Habeas Corpus.*

157. Applications for all other writs of *habeas corpus* must be made on affidavit to a judge at chambers.

158. An application to bring up a prisoner to give evidence on any cause or matter, civil or criminal, before any court, justice, or other judicature, may be made to a judge on affidavit for an order.

159. When a prisoner is brought up by *habeas corpus*, the counsel for the prisoner shall be first heard, and then the counsel for the Crown, and then one counsel for the prisoner in reply.

MOTIONS.

160. Order LII of the Rules of the Supreme Court (motions and other applications), shall, as far as it is

applicable, apply to all civil proceedings on the Crown side.

The following rules shall apply to all proceedings on the Crown side :—

161. Unless the court or a judge give special leave to the contrary, there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing it.

162. Except as may be otherwise provided by these Rules all applications on the Crown side shall be made by way of motion supported by affidavit, but no affidavit shall be necessary for an order demandable as of right by the Crown, or where it is not necessary to state matters of fact.

163. When any motion is made, founded on evidence by affidavit, a copy of such affidavit intended to be used shall be served with the notice of motion.

164. All cases of conviction and of orders, removed into court from any inferior jurisdiction, shall be entered for argument upon notice of motion to show cause why the conviction or order should not be quashed.

165. If on the hearing of a motion or other application the court or a judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the court or judge may either dismiss the motion or application or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the court or judge shall think fit.

ATTACHMENT FOR CONTEMPT.

167. An application for an attachment for contempt shall be by motion for an order *nisi*. The service of an order *nisi* for an attachment shall be personal.

168. Every writ of attachment for contempt shall be made returnable on a day certain during the session. In case of a return of *non est inventus* thereon, one or more writs may issue dated on the return day of the previous writ.

169. If the sheriff returns *cepi corpus*, on application to a judge, an order shall be granted for a writ of *habeas corpus* to issue to bring in the body of the defendant,

170. When the defendant is brought before the court on the attachment, a motion may be made by the prosecutor, or if he does not make it, by the defendant, that he may be sworn to answer such questions or interrogatories as may be put to him by the prosecutor, and must give such bail to answer them before a master or such other person as the court may appoint, and for the master or such other person to proceed to examine the matter and report to the court thereon.

171. In default of bail the defendant shall be committed to the county gaol, but if at any time after he be prepared to give it, he may be brought before the court or a judge on an order on the person in whose custody he is, which order shall be granted on application to a judge.

172. On the defendant being sworn an order may be granted and served on the prosecutor to file interrogatories with the master or person appointed by the court within four days after the service thereof. If no interrogatories are filed at the end of the fourth day, on obtaining a certificate from the master or person so appointed to that effect, the defendant shall be discharged out of custody by an order of the court or a judge.

173. The answers to the interrogatories shall be signed by the defendant, and also acknowledged by him before any commissioner to administer oaths in the Supreme Court.

174. On an intimation to one of the parties that the master or person appointed by the court is prepared with his report, a motion may be made on a four days' notice to be served on the other party, that on a day certain he do make his report to the court.

175. The defendant shall be present in court on such report being made, and if he is in custody, an order if necessary, shall be made for a writ of *habeas corpus* to bring him into court.

176. If the defendant be out on bail, the prosecutor shall, if possible, give notice to the defendant and his bail that the defendant is required personally to attend the court on the report, and that if he does not so attend the court will be moved to estreat the recognizance.

177. If the defendant be reported in contempt, the court after hearing the parties on the report may either

pronounce sentence at once, or commit him to the county gaol until some future day for that purpose, when an order shall be made directing the keeper of the gaol to bring the defendant into court.

178. On proceeding to sentence, affidavits in mitigation or aggravation may be read, and the defendant or his counsel heard, and the prosecutor's counsel be heard in reply.

179. If the defendant be sentenced to imprisonment, the order for sentence shall be lodged with the gaoler of the prison to which he is committed.

180. If the defendant is reported not to be in contempt, the court may order him and his recognizances to be discharged, and with costs if the court shall be of opinion that the prosecutor's complaint was groundless and the attachment vexatious.

181. All interrogatories in writing on attachments shall be signed by counsel or solicitor.

182. It shall be lawful for the master or person appointed to examine to disallow any question or interrogatory that he considers irrelevant or otherwise improper.

TIME.

183. Order LX of the Rules of the Supreme Court, (time), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

The following Rules shall apply to all criminal proceedings on the Crown side :—

184. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or the practice of the court, the same shall be reckoned exclusively of the first day, and inclusively of the last day.

185. When any limited time less than six days from and after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day and Good Friday, shall not be reckoned in the computation of such limited time.

186. When the time for doing any act or taking any proceeding expires on a Sunday, or other days on which the offices are closed, and by reason thereof such act or

proceeding cannot be done or taken on that day, such act or proceeding shall, as far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the office shall next be opened.

187. A court or a judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered at the discretion of the court or a judge, although the application for the same is not made until after the expiration of the time appointed or allowed.

188. In all causes in which there have been no proceedings for one year from the last proceeding had, the party, whether prosecutor or defendant, who desires to proceed, shall give a calendar month's notice to the other party of his intention to proceed. A summons of a judge, on which no order has been made, shall not be deemed a proceeding within this Rule. Notice of trial, though afterwards countermanded, shall be deemed a proceeding within it.

AMENDMENT.

189. Order XXVIII of the Rules of the Supreme Court, (amendment), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

COSTS.

190. Order LXIII of the Rules of the Supreme Court, (costs), and the provisions respecting costs and fees of solicitors and counsel mentioned therein and the provisions in force in Nova Scotia respecting sheriff's fees, shall, as far as they are applicable, apply to all civil and criminal proceedings on the Crown side.

191. In all cases not specially provided for the unsuccessful party shall pay costs unless the court or a judge otherwise orders.

NOTICES.

192. Order LXIV of the Rules of the Supreme Court, (notices), shall, as far as it is applicable, apply to all proceedings on the Crown side, civil or criminal.

NON-COMPLIANCE.

193. Order LXVIII of the Rules of the Supreme Court (effect of non-compliance), shall, as far as it is applicable, apply to all proceedings on the Crown side, civil or criminal.

INTERPRETATION CLAUSE.

193. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular.

“Crown side” means the Crown side of the Supreme Court.

“Judge at chambers” shall include a judge at chambers in Halifax and elsewhere.

“Judgment” shall include order and conviction.

* * * * *

FORMS.

196. The forms in the appendix when applicable, and where not applicable forms of the like character as near as may be, shall be used in all proceedings on the Crown side.

197. In cases in which the forms of procedure are omitted from the appendix, the forms given in the appendix to the “Crown Office Rules, 1886,” of the High Court of Justice of England, shall be followed where applicable.

RETURNS BY SHERIFFS AND CLERKS OF THE CROWN.

198. On the opening of the court on the first day of every criminal sittings at Halifax, and of every sittings in the other counties, the sheriff shall hand to the presiding judge a return in writing under his hand of all warrants, or other process for the collection of fines, penalties, amercements, or forfeitures, received by him since the commencement of the last preceding criminal sittings or sittings in the county, and of his proceedings thereon, giving in each case the date, name, amount, the sum collected, and the disposal of it, and if the whole amount was not collected, giving the reason thereof.

199. On the opening of the court on the first day of every criminal sittings at Halifax, and of every sittings in the other counties, the Clerk of the Crown shall

hand to the presiding judge a return in writing under his hand of all the fines, amercements, forfeitures, and penalties imposed by the court since the commencement of the last preceding criminal sittings or sittings in the county, and of all recognizances, bonds, and other securities forfeited, or in his opinion liable to forfeiture, during that period which have been taken or filed in, or returned to, or removed into the court, with a detailed account of all proceedings taken since the commencement of the last criminal sittings, or sittings in the county, to estreat any recognizances, or collect any fines, penalties or amercements, or forfeitures, giving the names and descriptions of the parties liable, and the suit or proceeding, if any, in which the recognizances were given, or the fines, forfeitures, or penalties imposed; and if any warrant or other process issued to collect the same has been returned during the same period, it shall accompany such return.

200. The Clerk of the Crown shall at the same time furnish the presiding judge with a list of the indictments found, but which have not been tried.

WHEN TO COME IN FORCE.

201. The foregoing Orders and Rules may be cited as the Supreme Court Rules (Crown Side). They shall come into operation on the fifth day of February, 1901, and shall also apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all matters then pending.

Dated the second day of February, A. D. 1901.

SUPREME COURT RULES (CROWN SIDE).

FORMS.

1.

General Form of Writ of Certiorari. (Rule 27.)

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to (*here insert direction*), and to every of them, greeting :

We being willing for certain reasons that (*here insert description of proceeding to be removed as in the order for the certiorari*) (as is said) be sent by you before Us, do command you, and every of you that you or one of you do send forthwith under your hands (or seals), or the hand (or seal), of one of you before Us, in the Supreme Court at....., in the County of....., all and singular the said proceedings with all things touching the same as fully and perfectly as they have been made by you (or some of you), and now remain in your custody or power, together with this Our writ, that we may cause further to be done thereon what of right and according to the law We shall see fit to be done.

Issued at....., in the County of....., the....day of....., in the year of Our Lord One Thousand Nine Hundred and

(To be indorsed.)

By order of court (*or of Mr. Justice*.....), at the instance of

This writ was issued by M. N., of X., solicitor for (*or, if the case is so, "agent for" G. H., the solicitor for*),

2.

Notice to Justices of Application for Certiorari to Remove Conviction, or Order of Justices. (Rule 30.)

To A. B. and C. D., Esquires, two of Her Majesty's Justices of the Peace, in and for the county (city, or district) of.....(*or E. F., Judge of the County Court, or Stipendiary Magistrate, as the case may be*):

Take notice, that the Supreme Court at..... will be moved on the..... day of....., or so soon after as counsel can be heard (*or, that application will be made to a Judge in Chambers at....., on the..... day of.....*) at the hour of....., in the....noon, on behalf of E. F., for a writ of *certiorari* to remove into the said court a certain record of conviction (*or order*), under

the hands and seals of you, the said A. B. and C. D., as such Justices as aforesaid (*or as the case may be*), made on or about the day of, whereby the said E. F. was convicted of (*here describe the offence, or describe concisely the order intended to be removed*).

Dated, &c.

(Signed.) E. F., (*or by his solicitor stating himself to be the solicitor for the above named E. F.*)

3.

Affidavit of Service of Notice of Application for Certiorari to Remove Conviction or Order of Justices, &c. (Rule 196.)

In the Supreme Court, }
Crown Side. }

I, G. H., of, clerk to, solicitor for E. F., make oath and say:—

1. That I did, on the day of, serve A. B., Esquire, one of Her Majesty's Justices of the Peace, in and for the county of, with the notice hereunto annexed, marked A., by delivering a true copy of the said notice to the said A. B., at, in the said county (*or where the service is not personal, as follows:—*)

That I did, on the day of also serve C. D., Esquire, one other of Her Majesty's Justices of the Peace in and for the said county, with the said notice by delivering a true copy of the said notice to and leaving the same with (*the wife, clerk or servant*) of the said C. D., at the house or residence of the said C. D., situate at, in the said county.

Sworn to, &c.

Filed on behalf of

4.

Recognizances to be Filed Before Notice of Motion for Certiorari is Given to Remove Conviction, Judgment or Order. (Rule 28.)

Be it remembered, that on the day of 19.., E. F., of, N. O., of, and P. Q., of, come before me, R. S., Esquire, one of the Commissioners of the Supreme Court in and for the county of, and acknowledge to owe to our Sovereign Lady the Queen the sum of Two Hundred Dollars of lawful money of Canada, to be levied upon their several goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if the said E. F. will make application for an order for a writ of certiorari to remove into the Supreme Court a certain record of a conviction (*or judgment or order*) made on or about the day of A. D. 19.., by, whereby E. F., at the suit of Her Majesty on the prosecution of, (*or as the case may be*) was convicted of (*or ordered to*) (*Here describe shortly the offence or substance of the order*); and if said order or a writ of certiorari is refused, will pay such costs as the court or a judge

may direct; and if such order is granted that he, the said E. F., will prosecute with effect and without wilful or affected delay, the said writ of certiorari and the proceedings to quash said conviction (*judgment or order*) and will respond the judgment to be finally given in the matter, and will pay such costs as the court or a judge may direct; then this recognizance to be void, or else to remain in full force.

Taken and acknowledged the day and year first aforesaid, Before me, (Sgd.) R. S., <i>Com. Sup. Court for</i> <i>County of</i>	}	(Sgd.) E. F. N. O. P. Q.
--	---	---

5.

Notice to Opposite Party of Motion for Certiorari to Remove a Conviction, Judgment or Order. (Rule 27.)

In the Supreme Court, }
 Crown Side. }

Take notice, that a motion will be made before....., at on....., the.....day of....., A. D. 19.., at..... o'clock, or so soon thereafter as the Court (*or the Judge*) shall be at liberty to hear the same, for an order for a writ of certiorari to remove into the Supreme Court a certain record of a conviction (*or judgment or order*) made on or about the.....day of....., A. D. 19.., by....., whereby E. F., at the suit of Her Majesty, on the prosecution of....., (*or as the case may be*) was convicted of, (*or ordered to.*) (*Here describe shortly the offence or substance of the order.*)

The application will be made at the instance of....., and will be supported by affidavits and exhibits, copies of which are served herewith.

[*If the objection is on account of any irregularity or omission, or mistake in drawing up the conviction, order or judgment, insert the grounds.*]

Dated, &c.

To the prosecutor or his solicitor.	}	(Sgd.) C. D. of..... <i>Solicitor of above-named defendant.</i>
--	---	--

N. B.—These forms must be varied to make them applicable to other proceedings.

6.

Judge's Order for Certiorari for Conviction, Judgment or Order.
 (Rule 27.)

(Heading as in No. 5.)

Upon reading the affidavits of...., filed the.....day of....., 19.., and upon hearing counsel on both sides, (*or as the case may be.*)

It is ordered that a writ of Certiorari issue to remove into this court a certain, (*as in the notice No. 5.*)

7.

Certiorari to Remove Conviction, Judgment or Order. (Rule 35.)

VICTORIA, by the Grace of God, &c., to (*here insert the names of the judge, justices or court to whom the writ is to be directed*), greeting: We being willing for certain reasons that a certain record of (*here describe the conviction, judgment or order, as in the judge's order, form No. 6*) as is said, be sent by you before Us, do command you, and every of you, that you or one of you do send forthwith under your seals, or the seal of one of you, before Us, in Our Supreme Court at....., all and singular the said record, with all things touching the same, as fully and perfectly as they have been made by you, or some of you, and now remain in your custody or power, together with this Our writ, that we may cause further to be done thereon what of right and according to the law we shall see fit to be done.

Issued at

(To be indorsed.)

By Order of Court (*or of Mr. Justice.....*)

At the instance of the within-named defendant, (*or as the case may be.*)

This writ was issued by, &c. ,

8.

Return to Writ of Certiorari. (Rule 196.)

Indorse the writ thus :

The execution of this writ appears by the schedules. (*The Schedules consist of the convictions, orders and other documents to be returned, hereunto annexed.* The answer of A. B., Esquire, one of the justices within mentioned

To be signed and sealed by one of the justices. [I. s.]

9.

Entry of Appearance to Information, &c. (Rule 73.)

In the Supreme Court, }
Crown Side. }

The Queen
against
A. B.

Enter appearance for the above-named A. B. to this information.

Dated, &c.

(Sg'd.) C. D., of,
Solicitor of the above-named defendant.

10.

*Notice of Motion to Discharge Prisoner Out of Custody when
Prosecutor has not Proceeded within the Time Limited
after Defendant's Apprehension. (Rule 39.)*

In the High Supreme Court, }
Crown Side. }

The Queen

against

A. B.

Take notice that application will be made to this Court (*or to a Judge in Chambers*) at the expiration of eight days after service of this notice, or as soon after as counsel can be heard, that the above-named defendant be discharged out of custody upon his entering an appearance to the information in this prosecution, on the ground that the prosecutor has not proceeded as required by Rule 39 of the Rules of the Supreme Court (Crown Side).

Dated, &c.

(Sg'd.) C. D., of L.,
Solicitor of the above-named defendant.

To W. G., the Prosecutor, or
the Solicitor for the Prosecutor.

11.

*Notice of Motion for Discharge of Prisoner Out of Custody After
Conviction when Prosecutor has not Proceeded to
Bring Him up for Sentence. (Rule 40.)*

(Heading as in No. 10.)

Take notice, that this court will be moved at the expiration of eight days after service of this notice, or so soon after as counsel can be heard, that the above-named defendant be discharged out of custody upon giving his own recognizance, the prosecutor not having brought up the said defendant for sentence as required by Rule 40 of the Rules of the Supreme Court (Crown Side).

Dated, &c.

12.

Recognizance to Prosecute Information (Criminal): (Rule 41.)

Be it remembered that on the day of, A. D. 19.., before, Esquire, Commissioner of the Supreme Court for the County of, cometh A. D. (the prosecutor), of, and C. D., of, and E. F., of, and severally acknowledge to owe to G. H. (the defendant), the sum of Two Hundred Dollars, upon condition to prosecute with effect a certain information exhibited in the Supreme Court against the said G. H., by order of the said court, dated the day of, A. D. 19.., for certain misdemeanors, and abide by and observe all such orders and things as the said court shall direct in that behalf.

Taken, &c.

13.

Recognizance to Prosecute Information Quo Warranto. (Rule 41.)

(*Similar to No. 12, except that the information must be described as*) a certain information in the nature of a *Quo Warranto*, exhibited against the said G. H., on the relation of the said A. B., in the said court, to show by what authority he claims to exercise the office of a (*member of the Municipal Council for the County of, or as the case may be*), whereof he is impeached, and to abide by and observe all such orders and things as the said court shall direct in that behalf.

Taken, &c.

14.

Notice to a Justice of the Peace of Intention to Apply for a Criminal Information. (Rule 42.)

To A. B., Esquire, one of Her Majesty's Justices for the county of

Take notice, that the Supreme Court at, will be moved on the day of, or so soon after as counsel can be heard, on behalf of C. D., for an order to show cause why an information should not be exhibited against you for certain misdemeanors, in unlawfully, maliciously and corruptly, and contrary to your duty as such justice of the peace. (*Here set out the nature of the offence.*)

Dated, &c.

(Sg'd.) H. I.,
Solicitor for the said C. D.

Notice to Several Justices.

Commence, as above, and continue why one or more information or informations should not be exhibited against you or some or one of you, &c., as above.

15.

Information, (Criminal.) (Rule 196.)

In the Supreme Court, }
Crown Side, }
To Wit. }

Be it remembered, that A. B., Attorney-General of our present Sovereign Lady the Queen, in the Supreme Court, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes in his own proper person, comes here into court, before the Queen herself, at, upon the day of, A. D. 19., (*the day the order was made.*) And for our said Lady the Queen gives the court here to understand and be informed, that (*state offence, and then proceed in the same manner as if it were an indictment.*)

Second Count.—And the said Attorney-General of our said Lady the Queen, for our said Lady the Queen, further gives the court here to understand and be informed that, &c.

(To Conclude.)

Whereupon the said Attorney-General for our said Lady the Queen prays the consideration of the court here in the premises, and that due process of law may be awarded against him, the said B. G., in this behalf to make him answer to our said Lady the Queen, touching and concerning the premises aforesaid.

(Sg'd.)

A. B.,

Attorney-General.

16.

Information Quo Warranto Against Trustee of a School.
(Rule 196.)

In the Supreme Court, }
Crown Side, }
To Wit. }

Be it remembered, that A. B., Attorney-General of our present Sovereign Lady the Queen, in the Supreme Court, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes in his own proper person, comes here into court before the Queen herself at....., on the.....day of....., in the year of Our Lord One Thousand Nine Hundred and....., (*date of order*), and for Our Lady the Queen at the relation of A. B., of....., gives the court here to understand and be informed that School Section No....., in the county of....., is a School Section within the meaning of Chapter 52, Revised Statutes of Nova Scotia, Of Public Instruction. And within said section, pursuant to the provision of said chapter, three trustees (*or as the case may be*) are to be elected as and for the board of trustees for said section in manner as by the said chapter provided, and that the place and office of trustees of the School Section, No....., is a public office and place of great trust and pre-eminence within the said section, touching the rule and government of the schools in said section. And that C. D., of....., in the said county, merchant, (*or as the case may be*), heretofore, to wit on the.....day of....., in the year of Our Lord One Thousand Nine Hundred and....., within the said school section in the county aforesaid, did use and exercise, and from thence continually afterwards to the time of exhibiting this information, has there used and exercised, and still does there use and exercise, without any legal warrant, authority, or right whatsoever, the office of trustee of said school section in the county aforesaid, and for and during all the time last above-mentioned, has there claimed and still does claim to be a trustee of said school section, and to have, use, and exercise all the privileges and perform all the duties belonging and appertaining to the said office, which said offices, privileges, and duties he, the said C. D., for and during all the time last above-mentioned, upon our said Lady the Queen, without any legal warrant, authority, or right whatsoever, has usurped and still does usurp, that is to say, within the said district, in the county aforesaid, in contempt of our said Lady the Queen, to the great damage and prejudice of her royal prerogative, and against her crown and dignity.

Whereupon the said Attorney-General of our said Lady the Queen, for our said Lady the Queen prays the consideration of the court here in the premises. And that due course of law may be

awarded against him, the said C. D., in this behalf to make him answer to our said Lady the Queen, and show by what authority he claims to have, use, and enjoy, and perform the office, liberties, privileges, and duties aforesaid.

(Sg'd.)

A. B.,

Attorney-General.

17.

Notice of Motion for an Information Quo Warranto. (Rule 46.)

In the Supreme Court, }
Crown Side.

Take notice that the Supreme Court at Halifax will be moved on the.....day of....., 19.., or as soon after as counsel can be heard, on behalf of A. B. of....., merchant, (*or as the case may be*), that an information in the nature of a *Quo Warranto* be exhibited against you C. D., to show by what authority you claim to exercise the office or franchise of a.....of....., on the ground:—That (*here shortly state the grounds of the application.*)

And further take notice, that in support of this application will be read the affidavits of E. E., and another, and G. G., sworn respectively the.....day of....., 19.., and the exhibits therein referred to, copies of which are served herewith.

Dated, &c.

(Sg'd.) X. Y. of Z., Agent for M. N. of S.,

Solicitor for the above-named A. B.

To C. D., of T.

18.

Disclaimer Upon an Information Quo Warranto. (Rule 53.)

In the Supreme Court, }
Crown Side.

The Queen on the relation of A. B.,
against
C. D.

And now, that is to say, on the.....day of....., 19.., comes the above-named C. D., by his solicitor (*or in his own proper person*), and says that he altogether disclaims and disavows the office, liberties, privileges, and franchises in the said information above specified, and cannot deny but that he has usurped upon our said Lady the Queen, without any legal warrant, royal grant or right whatsoever, the said office, liberties, privileges, and franchises in the said information above mentioned, and confesses and acknowledges the said usurpation in manner and form as in the said information is above alleged.

(Sg'd.)

C. D.,

(*or by his counsel.*)

19.

Judgment of Ouster on Disclaimer to Quo Warranto. (Rule 53.)

Heading as in No. 18.

The.....day of....., 19.. .

The defendant having, on the.....day of....., 19.., entered a disclaimer upon this information, it is this day adjudged that he, the said C. D., do not in any manner intermeddle, &c., (*proceed as in form for judgment on Quo Warranto, form 43.*)

20.

Writ of Mandamus. (Rule 61.)

VICTORIA, by the Grace of God, &c.

to.....
of.....
.....greeting.

Whereas, by (*here recite Act of the Legislature, or Charter, if the act required to be done is founded on either one or the other.*) And whereas, We have been given to understand and are informed in our Supreme Court before us that (*insert necessary inducement and averments.*) And you the said, were then and there required by (*insert demand*), but that you the said, well knowing the premises, but not regarding your duty in that behalf, then and there wholly neglected and refused to (*insert refusal*), nor have you or any of you at any time since in contempt of Us and to the great damage and grievance of, as we have been informed from their complaint made to us. Whereupon, we being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you, firmly enjoining you that you (*insert command*) or that you show Us cause to the contrary thereof, lest by your default the same complaint should be repeated to Us; and how you shall have executed this Our writ make known to Us in Our said Court at, forthwith then returning to Us this Our said writ, and this you are not to omit.

Issued, &c.

To be indorsed.

By order of court (or of Mr. Justice.....)

At the instance of.....

This writ was issued by, &c.

21.

Return to Writ of Mandamus. (Rule 196.)

The return may either be indorsed on the back of the original writ, or engrossed on a separate schedule.

When indorsed on the back of the original writ.

The answer of (*the parties to whom the writ is directed*) to this writ:—

We, the, &c., (*the Defendants*) to whom this writ is directed, do most humbly certify and return to Our Sovereign Lady the Queen, at the time and place in this writ mentioned, that we have, &c., (*when the return is an obedience to the writ, the words of the mandatory part of the writ should be recapitulated in the past, instead of the future tense*). As by the said writ we are commanded.

(*To be signed by the parties making the return, or a sufficient number to form a quorum, unless they are a corporate body, in which case it is sufficient to attach the corporate seal*).

When the return is engrossed on a separate schedule.

Indorse the original writ (*or the copy served*) thus:

The return of to this writ (*or if the return is obedience, say, the execution of this writ*) appears in the schedule hereunto annexed.

The answer of

(*To be signed and sealed as above.*)

22.

Writ of Prohibition. (Rule 196.)

VICTORIA, by the Grace of God, &c., to....., Judge of our County Court, District No., or.....Stipendiary Magistrate (*or as the case may be,*) greeting.

Whereas, we have been given to understand that you, the said (*here state the matter complained of.*) And that the said.....has no jurisdiction to hear and determine the said.....by reason that (*here state facts showing want of jurisdiction.*)

We therefore hereby prohibit you from further proceeding in the said

Issued to

This writ was issued by, &c.

23.

Certificate of Indictment Found or Information Filed in the Supreme Court. (Rule 74.)

In the Supreme Court, }
Crown Side. }

The Queen

vs.

A. B.

I hereby certify that A. B. stands charged by indictment found (*or information filed*) against him in this court, at, on the

.....day of....., 19.., with (*here shortly state the offence*) and that the said A. B. has not appeared or pleaded to the said indictment (*or information*) nor is he under any recognizance so to do.

Dated, &c.

(Sg'd.)

C. D.,

Clerk of the Crown.

24.

Warrant of Arrest. (Rule 75.)

In the Supreme Court, }
Crown Side. }

Nova Scotia to wit: Whereas, it is certified to me by the proper officer in that behalf that (*as in certificate No. 23.*)

These are, therefore, to command you forthwith to apprehend the said A. B., and to bring him before me or some other judge of the Supreme Court, or before some one or more of the justices of the peace in and for the said (*county*) of....., to be dealt with according to law.

Dated, &c.

(Sg'd.)

J. MACDONALD,

Chief Justice of Nova Scotia.

To the sheriff of....., and to all constables and other peace-officers whom it may concern.

25.

Warrant to Admit to Bail on Indictment Found or Information Filed. (Rule 75.)

In the Supreme Court, }
Crown Side. }

Nova Scotia to wit. Whereas, it is certified to me by the proper officer in that behalf that (*as in certificate No. 23.*)

These are, therefore, to command you forthwith, to apprehend the said A. B., and to bring him before me or some other judge of the Supreme Court in Chambers at....., or before one or more justice or justices of the peace, near to the place where he shall be taken, to the end that he may find sufficient sureties for his immediate appearance in this court, and forthwith to plead to the said indictment, "*to try the same at the then (or next) sittings of the Supreme Court,*" and personally to appear in the said court on the trial of the said indictment (*or information*) and also upon the return of the postea, if he shall be convicted, and be further dealt with according to law.

Dated, &c.

(Sg'd.)

J. MACDONALD,

Chief Justice of Nova Scotia,

26.

Warrant of Committal. (Rule 76.)

In the Supreme Court, }
Crown Side. }

Whereas, By my warrant (*or the warrant of the Honourable Mr. Justice*, dated the day of, 19. . ., after reciting that it had been certified to me (*or him*) that (*as in the certificate*) I (*or he*) commanded the sheriff of and all constables and other peace officers whom it might concern, forthwith to apprehend the said A. B., and bring him before me (*or the said judge*) or some other judge of the Supreme Court, or before some one or more justices of the peace in and for the county of, to be dealt with according to law;

And whereas, The said A. B. has been apprehended under and by virtue of the said warrant and being now brought before me (*if before a justice of the peace and one of Her Majesty's justices of the peace, in and for the county of*), it is hereupon duly proved to me upon oath, that the said A. B. is the same person who is named and charged in and by the said indictment: These are therefore to command you to whom this warrant is addressed, forthwith to take and lodge the said A. B. in the county jail at F., in the county of, together with this warrant, there to be imprisoned by the jailer of the said prison until he shall be discharged by due course of law.

Dated, &c.

(Sg'd.) J. MACDONALD,
Chief Justice of Nova Scotia,

To

27.

Notice to Defendant to Appear to, Information in Pursuance of Undertaking in Enlarged Order. (Rule 196.)

(*Copy the enlarged Order containing the undertaking to appear, and write the following notice at the foot*):

In the Supreme Court, }
Crown Side. }

The Queen

vs.

B. R.

Take notice, that in pursuance of the above Order, an information has been filed in Her Majesty's Supreme Court at, against the above-named defendant for certain misdemeanors. And that he is hereby required to cause an appearance to be entered in the said court thereto immediately in pursuance of his undertaking contained in the above Order. And in default thereof the said court will be moved on the day of, or so soon after as counsel can be heard, that the prosecutor be at liberty to enter an appearance thereto for the said defendant, and to sign judgment

against him (*or* that an attachment may issue against him for his contempt in not performing his said undertaking.)

Dated, &c.

(Sg'd.) M. N. of I., agent of G. H., of Y.,
Solicitor for the Prosecution.

To B. R., the above-named defendant, and to....., his solicitor
or agent.

If it is intended to apply for an attachment, this notice must be served personally.

28.

Notice of Bail to Avoid Arrest. (Rule 78.)

(Heading as in No. 27.)

Take notice, that the above-named defendant will appear before a judge in chambers at....., (*or* before a justice of the peace in and for the county of....., at.....), on the.....day of....., 19.., at the hour of...., in the....noon, and put in bail to appear in this court on the....day of....., 19.., to the indictment found (*or* information filed) against him in this prosecution for certain misdemeanors, and to plead thereto *and try the same at the present* (*or* next) *sittings of the court*, and personally to appear at the trial of the said indictment (*or* information), and so from day to day, and not to depart without leave of the court. And the names and descriptions of such bail are A. B., of, &c., and C. D., of, &c.

Dated, &c.

(Sg'd.) M. N. of T., agent for X. Y., of S.,
Solicitor for the above-named defendant.

To C. D., the Prosecutor, or to Mr. F., the Solicitor, or agent for
the Prosecutor.

29.

Recognizance to Answer Indictment or Information. (Rules
78, 79.)

Be it remembered, that on the.....day of.....19.., A. B., C. D., and E. F., come before me, G. H., Esquire, Commissioner of the Supreme Court for the county of....., and acknowledge to owe to our Sovereign Lady the Queen the several sums following (*that is to say*) the said A. B. the sum of dollars, the said C. D. and the said E. F., the sum of dollars each of lawful money of Canada to be levied upon their several goods and chattels, lands and tenements to Her Majesty's use, upon condition that if the said A. B. appears in Her Majesty's Supreme Court atforthwith, and answers an indictment (*or information*) against him for certain (misdemeanors) according to the course of the said court, *and tries the same at the present* (*or* next) *sittings of the said court*, or so soon after as the case can be heard, and personally appears from day to day on the trial of the said indictment, and does not depart until he is discharged by the court before whom such trial is had, and appears from day to day, and does not depart until discharged by such.....Court, then this recognizance to be void or else to remain in full force,

Taken, &c.

30.

Notice to be Indorsed on Copy of Indictment or Information to be Served on a Defendant in Prison for Want of Bail to Answer. (Rule 80.)

In the Supreme Court, }
Crown Side. }

The Queen
against
J. J.

Take notice, that unless you shall, within the space of eight days next after the delivery hereof, cause an appearance, and also a plea or demurrer, to be entered in this court to the within information (*or indictment*), an appearance and a Plea of Not Guilty will be entered thereto in your name, pursuant to the rule in that case made and provided, and that the issue to be joined thereon will be tried at the next term (*or sittings*) of the Supreme Court to be holden in and for the county of.....

Dated, &c.

(Sg'd.) M. N., of L., agent for X. Y. of S.,
Solicitor for the Prosecution.

To J. J., the above-named Defendant.

31.

Affidavit of Service of Copy Information, or Indictment, With Notice Indorsed, on Defendant in Jail. (Rule 80.)

(Heading as in No. 30.)

I, A. B., of, &c., make oath and say,..

That I did on the.....day of....., 19.., deliver to the above-named defendant, then a prisoner in the county jail, and for the county of....., at the said prison, a copy of the paper writing hereunto annexed, marked with the letter (*annex a copy of the information and notice indorsed,*) and of the indorsement thereon.

Sworn, &c.

32.

Writ of Subpœna, to Answer an Information. (Rule 196.)

VICTORIA, by the Grace of God, &c., to A. B.: We command you that laying aside all pretences and excuses whatsoever, you be and appear in our Supreme Court at....., before Us, on the..... day of,.....19.., to answer to Us, of and concerning such matters and things as shall then and there be objected against you on our behalf, and further, to do and receive all and singular such matters and things as our said court shall then and there consider of concerning you in this behalf. And this you are not to omit under the penalty of Five Hundred Dollars, to be levied upon your goods and chattels, lands and tenements, if you shall make default in the premises.

Indorsement When on Criminal or Ex-officio Information.

In the Supreme Court, before the Queen herself,
 Attorney-General of our Lady the Queen, prosecutes this writ
 against the within named A. B., upon an information exhibited
 against him by the said, in the said court for certain
 misdemeanors whereof he is impeached.

When on Quo Warranto.

....., Attorney-General, &c., prosecutes this writ
 against the within-named A. B., upon an information in the nature
 of a *quo warranto*, on the relation of C. D., exhibited against the
 said A. B. by the said Attorney-General, in the said court, to show
 by what authority he claims to be (*a school trustee for section....*,
or as the case may be), whereof he is impeached.

This writ was issued by, &c.

Affidavit of Service of Subpœna to Answer to an Information.
(Rule 196.)

In the Supreme Court, }
 Crown Side. }

The Queen

against

A. B.

I, C. D., of, &c., make oath and say :

That I did on the.....day of....., 19.., serve A. B., the
 above-named defendant, with the writ of subpœna to answer in this
 prosecution hereunto annexed, and of the indorsement thereon, by
 delivering a true copy of the said writ and indorsement thereon to,
 and leaving the same with, (*a servant of the said*) A. B. at the house
 or residence (*or office*) of the said A. B., situated at....., in the
 county of..... And at the same time showing to the said
 (*servant of the said*) A. B., the said original writ of subpœna; and
 which said writ appeared to this Deponent to be duly and regularly
 issued out of and under the seal of this honorable court.

Sworn to, &c.

(Sg'd.) C. D.,

Filed on behalf of the Prosecutor (or Relator.)

33.*Writ of Attachment to Answer an Information.* (Rule 77.)

VICTORIA, by the Grace of God, &c., to the sheriff of.....,
 greeting :

We command you that you attach A. B., if he shall be found in
 your bailiwick, and him safely keep, so that you may have his
 body before Us in our Supreme Court at....., on the.....day
 of....., to answer to Us for certain misdemeanors whereof he is
 impeached, and that you have then there this writ.

Issued, &c.

34.*Writ of Attachment to Answer Information Quo Warranto.*
(Rule 196.)

(Same as No. 33.)

(Except that instead of the words "To answer to us for certain misdemeanors, &c.," say:—

To answer to us upon an information in the nature of a *Quo Warranto*, exhibited against him by....., our Attorney-General, in our Supreme Court at....., to show by what authority he claims to be, &c.

This writ was issued by, &c.

35.*Writ of Venire Facias, to Answer.* (Rule 81.)

VICTORIA, by the Grace of God, &c., to the sheriff of....., greeting:

We command you that you cause to come before us, in our Supreme Court at....., on.....day of.....19.., A. B., to answer to us for certain misdemeanors whereof he is indicted, and have you then there this writ.

Issued, &c.

This writ was issued by, &c.

36.*Writ of Distringas, to Answer.* (Rule 81.)

VICTORIA, by the Grace of God, &c., to the sheriff of....., greeting:

We command you that you distrain A. B., by all his lands and chattels in your bailiwick, so that neither he nor any one for him do put his hands to the same, until you shall have another command from us for that purpose. And that you answer to us for the issues thereof, so that you may have him before us in our Supreme Court at....., on the.....day of....., 19.., to answer to us for certain whereof he is indicted (*or impeached*) and to hear his judgment for his many defaults, and have you then there this writ.

Issued, &c.

37.*Writ of Capias to Answer to Indictment, or Information.*
(Rule 196.)

VICTORIA, by the Grace of God, &c., to the sheriff of....., greeting:

We command you that you take A. B., if he shall be found in your bailiwick, and him safely keep, so that you may have his

body before us in our Supreme Court at....., on the.....day of....., 19.., to answer to us for certain crimes whereof he is indicted (*or impeached.*) And have you then there this writ.

Issued, &c.

38.

Summons to Admit to Bail on a Criminal Charge. (Rule 82.)

In the Supreme Court, }
Crown Side. }

The Honourable Mr. Justice.....in Chambers. (If indictment or information found, insert title.)

Upon reading the affidavit of.....&c., filed the.....day of....., 19.., and upon hearing counsel for A. B.

It is ordered that all parties concerned attend the judge in chambers on the.....day of....., 19.., at the hour of....., in the.....noon, on the hearing of an application on behalf of the said A. B., to be admitted to bail.

Dated, &c.

NOTICE.—*To be served upon the Attorney-General, committing magistrates, or coroner, and prosecutor, or in case of murder or manslaughter on the widow, or next of kin, of the deceased, or as the judge may direct.*

39.

Order to Admit Prisoner to Bail. (Rule 82.)

In the Supreme Court, }
Crown Side. }

The Honourable Mr. Justice....., in Chambers. (If indictment or information found, insert title.)

Upon reading the affidavit of....., filed the..... day of....., 19.., upon hearing counsel for

It is ordered that upon A. B., giving security by his own recognizance in the sum of....., with (two) sufficient sureties in the sum of..... each, before one of Her Majesty's justices of the peace, in and for the county of....., (or before a judge in chambers or a commissioner) for the personal appearance of the said A. B., at the next term or sitting of the Supreme Court, to be holden in and for the said county of....., then and there to answer to all such matters and things as on Her Majesty's behalf shall be objected against him, he, the said A. B., be discharged out of the custody of the keeper of the county jail at....., in the said county as to his commitment for (*here shortly state as in commitment.*)

Twenty-four hours' notice of the names and descriptions of the proposed sureties must be given to the Prosecutor, if any, and the Attorney-General, unless the judge order otherwise.

40.

Notice of Bail upon Order of Judge. (Rule 196.)

Whereas, the Honourable Mr. Justice,, has made an order bearing date the day of, 19.., that (*recite the order, see No. 39.*)

Now take notice that in pursuance of the said order, the said and (four) sufficient sureties will enter into such recognizance as aforesaid, before (*as in the order*) at, on the day of, at the hour of, in the noon. And that the names and descriptions of such sureties are (*here give names, &c., of sureties.*)

Dated, &c.

(Sg'd.)

M. N. of L., agent of G. H., of Y.,

Solicitor for the said

To the Attorney-General, the Prosecutor, (if any) (or widow, or next of kin) and to the committing magistrates (or coroner.)

41.

Warrant to Apprehend Defendant Sentenced at Trial when not Present at the Trial. (Rule 118.)

Whereas, the above-named Defendant, A. B., was on the day of, 19.., at the sittings (*or term*) of the Supreme Court, in the county of, before me, the Honourable Mr. Justice, tried, and by a jury of the country convicted of certain misdemeanors, and it was thereupon considered and adjudged and ordered by me that for the offences whereof he was so convicted, as aforesaid, he, the said A. B., should be imprisoned in the county jail at, in and for the county of, for the space of (*three calendar months*).

These are, therefore, to command you to apprehend and take the said A. B. and lodge him in the said prison at aforesaid, there to be imprisoned and kept in safe custody by the jailer of the said prison in execution of the said judgment.

Dated, &c.

42.

Order to Commit when Defendant Sentenced at Trial. (Rule 118.)

In the Supreme Court, }
Crown Side.

The Queen
against
A. B.

The defendant, A. B., being present here in court, and being by a jury of the country convicted of certain misdemeanors (*or felonies*) whereof he is indicted in this prosecution, it is ordered that he, the said defendant (*do pay a fine to our Sovereign Lady the Queen of dollars of lawful money of Canada, and further that he be imprisoned until the said fine be paid; and the said defendant is now here in court committed to the custody of the keeper of the county jail at, until the said fine be paid, or as the case may be.*)

Dated, &c.

By the Court,

43.

Judgment for the Crown on Quo Warranto After Trial With a Jury. (Rule 196.)

In the Supreme Court, }
Crown Side.

(Name of County.)

The Queen on the relation of

A. B.

against

C. D.

15th April, 19..

The information in this prosecution having on the 12th and 13th days of April, 19.., been tried before the Honourable Mr. Justice....., with a (special) jury of the county of....., and the jury having found (*state findings*) and the said Mr. Justice....., having ordered that judgment be entered for the Crown with costs (*or as the case may be.*) Therefore it is adjudged that the defendant, C. D., do not in any manner intermeddle with or concern himself about the office, liberties, privileges, and franchises in respect of which the said information has been filed, but that he be absolutely forejudged and excluded from exercising or using the same, or any of them, for the future. And that the said A. B., the relator above-mentioned, do recover against the said C. D., his costs in this behalf to be taxed.

The above costs have been taxed and allowed at.....

44.

Judgment for the Crown on Mandamus After Trial With a Jury. (Rule 196.)

In the Supreme Court, }
Crown Side.

(*Insert Name of County.*)

The Queen, on the prosecution of A. B., Plaintiff,

against

C. D., Defendant.

....

30th March, 19..

The issue of this writ of mandamus having on the.....day of....., 19.., been tried before the Honourable Mr. Justice....., with a (special) jury of the county of....., and the jury having found (*state findings*) and the said Mr. Justice....., having ordered that judgment be entered for the Crown with costs (*or as the case may be.*) Therefore it is adjudged that a peremptory writ of mandamus be awarded in this behalf, and that the plaintiff do recover against....., his costs to be taxed.

The above costs have been taxed and allowed at

45.

Writ of Supersedeas to Certiorari and Pracedendo to carry back Orders, Convictions, &c. (Rule 196.)

VICTORIA by the Grace of God, &c. To greeting:

Whereas, by our writ we have lately commanded you and every of you, or one of you, should forthwith send under your seals, or the seal of one of you, before us in our Supreme Court at, all and singular (*as in the writ of certiorari*) as fully and perfectly as they had been made by you, or some of you, and then remained in the custody or power of you, or any of you, together with that our writ, that we might cause further to be done thereon what of right and according to the law we should see fit to be done. We do for certain reasons Us thereunto moving, command you that you do wholly supersede whatsoever is to be done concerning the execution of that Our said writ. And that you proceed upon the said orders in such manner as if the said writ had not issued.

Issued, &c.

(To be Indorsed.)

"By order of court," or "By order of Mr. Justice,,"
(*as the case may be.*)

This writ was issued by, &c.

46.

Summons for writ of Habeas Corpus and Subjiciendum. (Rule 149.)

In the Supreme Court, }
Crown Side. }

The Honourable Mr. Justice, Judge in Chambers.

Upon reading the several affidavits of, &c., filed the day of, 19.., and upon hearing Mr, of counsel for.....

It is ordered that all parties concerned attend the judge in chambers on the day of, 19.., at the hour of in the noon, to show cause why a writ of *habeas corpus* should not issue directed to, to have the body of, before a judge in chambers at, forthwith to undergo, &c.

Dated, &c.

47.

Order for writ of Habeas Corpus and Subjiciendum. (Rule 149.)

In the Supreme Court, }
Crown Side. }

The Honourable Mr. Justice, Judge in Chambers.

Upon reading the several affidavits of, &c., filed the day of, 19.., and upon hearing counsel on both sides (*or as the case may be.*)

It is ordered that a writ of *habeas corpus* issue, directed to, to have the body of A. B. before a judge in chambers at, forthwith to undergo and receive, &c.

Dated &c.

48.

Writ of Habeas Corpus ad Subjiciendum. (Rule 147.)

VICTORIA by the Grace of God, &c., to, greeting :

We command you that you have in our Supreme Court, (*or before a judge in chambers*), at, immediately after the receipt of this our writ, the body of A. B., being taken and detained under your custody, as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, to undergo and receive all and singular such matters and things as our said court (*or judge*) shall then and there consider of concerning him in this behalf; and have you there then this our writ.

Issued, &c.

(To be indorsed.)

By order of court (*or Mr. Justice*)

This writ was issued by, &c.

49.

Notice to be Served with Writ of Habeas Corpus Ad Subjiciendum.
(Rule 196.)

In the Supreme Court, }
Crown Side. }

Whereas, this court (*or the Honorable Mr. Justice*) has granted a writ of *habeas corpus* directed to, commanding him to have the body of before the said court (*or before a judge at chambers*) at, immediately, to undergo, &c.

Now take notice, that you are hereby required to have the body of the said, before the said court (*or before the said Judge as aforesaid*), on the day of, 19.., at the hour of, in thenoon, and to make a return to the said writ, or in default thereof, the said court will then, or so soon after as counsel can be heard, be moved for an attachment against you, for your contempt in not obeying the said writ (*or if in vacation* that application will then be made to one of the judges of the said court for a warrant for your apprehension, in order that you may be held to bail to answer for your contempt in not obeying the said writ.)

Dated, &c.

(Sg'd.) M.N., of L.,

Solicitor for

To (the persons to whom the writ is directed, and any other person upon whom it may be deemed necessary to serve the writ).

50.

Notice of having Obtained Writ of Habeas Corpus Ad Subjiciendum on an Informal or Illegal Commitment. (Rule 196.)

(Heading as in No. 49.)

Recite the granting of the writ as No., then say:

Now take notice that by virtue of the said writ, the said A. B. will be brought before the said court (*or* before a judge in chambers) at, on the day of (at of the clock, &c.,) in order that he the said, may be discharged out of custody as to the commitment by which he is now detained in the custody of the said gaoler.

Dated, &c.

(Sg'd.) M. N.,
Solicitor for the said

To A. B. and C. D., Esquires, the committing magistrates, and to
....., the prosecutor.

51.

Affidavit for Writ of Habeas Corpus Ad Testificandum or Order to Testify. (Rule 157.)

In the Supreme Court, }
Crown Side.

I, A. B., of, &c., make oath and say:—

1. That C. D., now a prisoner confined in the county jail at, in and for the, undergoing a term of imprisonment for (*or* under commitment to take his trial for [*here shortly state offence*] is and will be a material and necessary witness on behalf of on the trial of an indictment (*or* before the grand jury of the county of, upon an indictment to be preferred against E. F., for certain, which indictment stands for trial (*or* is to be preferred) on the day of, 19.., at, in and for the county (or as the case may be) of

2. That the.....cannot safely proceed to trial (*or* prefer the said indictment) without the testimony of the said C. D.

Sworn, &c.

52.

Writ of Habeas Corpus ad Testificandum. (Rule 196.)

VICTORIA, by the Grace of God, &c., to the jailer of our prison at....., of and for our.....:

We command you that you have before (*description of court*) on the.....day of....., 19.., at....., the body of....., being committed and detained in our prison under your custody, as

is said, then and there to testify the truth and give evidence (on our behalf against A. B. for felony; or otherwise describe the proceedings as in a subpoena), and so from day to day until the said shall have given his evidence, as aforesaid. And when he shall have given his evidence then that you take him back without delay to our said prison under your custody, and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of law.

Issued, &c.

53.

Order Instead of Writ of Habeas Corpus ad Testificandum.

In the Supreme Court, }
Crown Side. }

The Queen
against
A. B.

Upon reading the affidavit of C. D., filed the day of 19.., and upon hearing the solicitor for

It is ordered that the jailer of Her Majesty's prison at, of and for the (county) of (or as the case may be), do have before at, on the day of, 19.., the body of E. F., committed and detained in his custody, as it is said, then and there to testify the truth and give evidence (on behalf of the Queen against G. H., upon an indictment for felony; or otherwise describe the proceedings in which the prisoner is required to attend, as in a subpoena), and so on from day to day until the said E. F. shall have given his evidence as aforesaid. And when he shall have given his evidence, then that you take him back without delay to the said prison, to be detained therein until he shall be from thence discharged by due course of law.

Dated, &c.

54.

Writ of Attachment. (Rule 196.)

VICTORIA by the Grace of God, &c.; to the sheriff of, greeting:

We command you to attach C. D., so that you may have him before us, in our Supreme Court at, on the day of, 19.., to answer to us for certain trespasses and contempts brought against him in our said court; and have you there then this writ,

Issued, &c.

55.

Affidavit for Habeas Corpus to bring up a prisoner to be charged with attachment. Rule 169.)

In the Supreme Court, }
Crown Side. }

The Queen
against
A. B.

I, G. H., of, &c., clerk of I. J., of, &c., the solicitor for the prosecutor in this case, make oath and say:

1. That on the day of last, a writ of attachment was granted by, and duly issued out of this honourable court, directed to the sheriff of, against the above-named defendant for his contempt in not (*describe the nature of the contempt.*)

2. That the said defendant is a prisoner for, now confined in the county jail at, of and for

3. That the prosecutor is desirous that the said defendant should be brought before this honourable court (or a judge in chambers at), in order that he may be charged with and committed upon the said attachment.

Sworn, &c.

56.

Writ of Habeas Corpus on return of Capi Corpus. (Rule 169.)

VICTORIA by the Grace of God, &c.; to the sheriff of, greeting:

We command you that you have the body of before us, in our Supreme Court at, forthwith after the receipt of this our writ, to answer to us for certain trespasses and contempts brought against him in our said court before us, and whereof by your return, sent to us, you have charged yourself. And have you then there this writ.

Issued, &c.

57.

Recognizance to Answer Interrogatories. (Rule 170.)

Be it remembered, that on the day of, 19.., in Her Majesty's Supreme Court, before the Queen herself at, come, of, and, of, and acknowledge themselves to owe to our said Lady the Queen the several sums following, that is to say, the said the sum of, and the said and the sum of each, of lawful money of Canada, to be levied upon their several goods and chattels, lands and tenements, to Her Majesty's use. Upon condition that if the said shall answer to all such interrogatories as shall be exhibited to him in the said court, touching a contempt supposed to have been by him committed against the said court, and shall appear from day to day in the said court, and not depart from the said court without leave, then this recognizance to be void or else to remain in full force.

Taken, &c.

By the Court.

INDEX TO CROWN RULES.

[The letter R. refers to the rules, and the letter F. to the forms.
The number is the number of the rule or form, as the case may
be, and is not the number of the page.]

ABRIDGMENT of time, R. 187

ADDRESS for service, R. 99

ADJOURNMENT of motion, R. 165

AFFIDAVITS,

application of Order xxxvi of Rules of Court, to civil proceedings on crown side, R. 5

evidence by, R. 6

title of, R. 7

statements in, to what extent admitted, R. 8

in N. S., how sworn, R. 9

commissioners to administer oaths, what bound to do, R. 10

affidavits, &c., otherwise than in N. S., how sworn, R. 11

form and language of, R. 12

description and abode of deponent, R. 13

names of more than one deponent in jurat, R. 14

how filed, R. 15

scandalous matter in, R. 16

erasure or interlineation in, R. 17

affidavits of the illiterate or blind, R. 18

defects in, when and how cured, R. 19

stamp on, office copies, R. 20

affidavit not to be sworn before solicitor, &c., acting for party sworn, R. 21

affidavit not to be sworn before clerk or partner of solicitor of party, R. 22

time for filing affidavits when limited, R. 23

order made *ex parte* on an affidavit not produced or filed to be void, R. 24

additional, to oppose new matter, not to be used without leave first obtained, R. 25

affidavits of service, what to state, R. 26

answers to interrogatories: See ATTACHMENT FOR CONTEMPT and see SERVICE

AMENDMENT,

Order xxviii of Rules of Court, to apply to civil proceedings, R. 189

APPEALS,

Order lviii of Rules of Court, to apply to civil proceedings on Crown side, R. 127.

APPEARANCE TO INFORMATION AND INQUISITION,

defendant to enter appearance in office of Clerk of Crown, R. 73

certificate of indictment being filed, R. 74; and see F. 23

apprehension of defendant under judge's warrant, R. 75: and see FF. 24, 25

committal of defendant, bail, R. 76.

default of defendant to appear, R. 77.

how defendant for misdemeanour may avoid arrest, R. 78

APPEARANCE TO INFORMATION AND INQUISITION—con-

- tinued
- defendant when apprehended, who bailed, R. 79
- defendant for misdemeanour in gaol, how to put in appearance, R. 80.
- appearance of body corporate or inhabitants, how compelled, R. 81
- certificate of indictment found or information filed in the Supreme Court, F. 23: and see R. 74
- warrant of arrest, FF. 24, 25: and see R. 75
- warrant to admit to bail on indictment found in Supreme Court, F. 25: and see R. 75
- warrant of committal, F. 26, R. 76
- notice to Defendant to appear to information in pursuance of undertaking and enlarged order, F. 27
- notice of bail to avoid arrest, F. 28
- recognizance to answer indictment or information, F. 29
- notice to be indorsed on copy indictment or information, to be served on a Defendant in prison for want of bail to answer, F. 30
- affidavit of service of copy information or indictment with notice indorsed on Defendant in gaol, F. 31
- writ of subpoena, to answer an information, F. 32
- writ of *venire facias*, to answer, F. 35
- affidavit of service of subpoena to answer to an information, F. 32 A
- writ of attachment to answer an information, F. 33
- writ of attachment to answer an information *quo warranto*, F. 34.

APPEARANCE TO WRITS, R. 145.

APPREHENSION of defendant on indictment found, R. 38

ATTACHMENT FOR CONTEMPT,

- application, how to be made, R. 167
- writ of, when returnable, R. 168
- return of *cepi corpus*, R. 169
- interrogation of defendant, R. 170
- committal in default of bail, R. 171
- interrogatories of prosecutor, R. 172
- answer to interrogatories of prosecutor, R. 173
- report of master, R. 174
- presence of defendant at hearing of master's report, R. 175
- notice to defendant of master's report, R. 176
- defendant reported to be in contempt, R. 177
- affidavits in mitigation or aggravation, R. 178
- sentence lodged with gaoler, R. 179
- defendant reported not to be in contempt, R. 180
- all interrogatories to be signed by counsel, R. 181
- irrelevant interrogatories, R. 182
- writ of attachment, F. 54
- affidavit for *habeas corpus* to bring up a prisoner to be charged with attachment, F. 55
- writ of *habeas corpus* on return of *cepi corpus*, F. 56
- recognizance to answer interrogatories, F. 57

BAIL,

- bail for felony or misdemeanour when party is in custody, R. 82.
- summons to admit to bail on a criminal charge, F. 38.
- order to admit prisoner to bail, F. 39.
- notice of bail, upon order of judge without *habeas corpus*, F. 40

CERTIORARI,

- application for writ of, R. 27
- recognizances and sureties on application for writ of, R. 28

CERTIORARI—continued

- recognizances to be filed before notice of application, R. 28
- recognizances, requirements of, R. 28
- notice ineffectual without recognizances filed, R. 29
- limit of time for application for, R. 30
- copy of commitment, &c., to be verified by affidavit, R. 31
- conviction, etc., may be quashed on application for writ, R. 32
- objections on account of mistakes in judgment or orders of justices to be stated in notice, R. 33
- costs of application, R. 34
- no costs when unopposed, R. 34
- form of writ, R. 35
- additional security may be ordered, R. 36
- prisoner discharged on application for writ, R. 37
- forfeiture of recognizance, R. 37
- general form of writ of, for orders, &c., F. 1
- notice to justices of application for, to remove conviction, or order of justices, F. 2
- affidavit of service of notice of application for *certiorari* for conviction, or order of justices, F. 3
- recognizance on application for, F. 4
- notice of motion for, to remove conviction, or order of justices, F. 5
- judge's order for *certiorari* for conviction, or order of justices, F. 6.
- certiorari* to remove conviction, or order of justices, F. 7
- return to writ of, F. 8

CIVIL PROCEEDINGS ON CROWN SIDE,

application thereto of following Rules of Court

- Order XXVIII: *see* AMENDMENT
- " XXXIII: *see* SPECIAL CASES
- " XXXVI: *see* AFFIDAVITS
- " XL: *see* EXECUTION
- " LII: *see* MOTIONS
- " LVI: *see* MANDAMUS
- " LVII: *see* APPEALS
- " LX: *see* TIME
- " LXIII: *see* COSTS
- " LXIV: *see* NOTICES
- " LXVIII: *see* NON-COMPLIANCE

And see FORMS

COMMISSIONERS TO ADMINISTER OATHS, RR. 9, 11.

COMMITTAL,

warrant of, F. 26

CONDITIONS IN RECOGNIZANCES: *see* RECOGNIZANCES

CONTEMPT: *see* ATTACHMENT FOR CONTEMPT

CONTINUANCES,

continuances not necessary, R. 110

COPIES OF PROCEEDINGS,

copies of proceedings may be obtained at office of Clerk of Crown, R. 98

CORPORATE BODY,

appearance of, how compelled, R. 81

COSTS,

order LXIII, of Rules of Court, to apply to proceedings, R. 190

unsuccessful party to pay, R. 191

on *certiorari*, R. 34

to successful party, R. 191

COUNSEL,

signature of, R. 181

CUSTODY OF RECORDS,

Clerk of the Crown to have custody of records, R. 3.

DATE OF PROCEEDINGS,

orders, &c., to bear date on which made, R. 4

DEMURRERS AND SPECIAL CASES, Entry of R. 101

DISCLAIMER TO QUO WARRANTO, R. 53, F. 18, judgment on
F. 19

DISTRINGAS, writ of, F. 36

DOCUMENTS, service of, R. 99

ENLARGEMENT OF TIME, RR. 112, 187

ESTREAT OF RECOGNIZANCES, R. 122: and see RECOGNIZ-
ANCES

EXECUTION,

Order XL of Rules of Court to apply to civil proceedings on
Crown side, R. 129

— CRIMINAL PROCEEDINGS,

judgment or orders which are enforceable by attachment,
R. 130

præcipe for writ of execution, R. 131

indorsements on writ of execution, R. 132

return of writ of execution, R. 133

poundage and expenses of execution, R. 134

directions to sheriff, R. 135

enforcement by writ, of moneys due under a judgment, R.
136

order of a judge, how enforced, R. 137

renewal of writ of execution, R. 138

evidence of renewal, R. 139

effect of writs of, R. 140

FORMS,

forms in Appendix to be used where applicable, R. 196

subjects to which the forms apply and under which they
are indexed

Attachment

Bail

Certiorari

Habeas Corpus

Indictments and informations

Judgment

Mandamus

Non-compliance

Paper books

Quo warranto

Recognizances

Scire facias

Special cases and demurrers

Time

HABEAS CORPUS,

(A.) *ad subjiciendum*

where to be applied for, R. 147

procedure when application is to Court, R. 148

procedure when to judge, R. 149

habeas corpus on extradition warrant, R. 150

writ, how to be served, R. 151

disobedience to writ, R. 152

return to writ—indorsement thereon, R. 153

amended or substituted return, R. 154

procedure on return of writ, R. 155

HABEAS CORPUS—continued

- discharge of prisoner before return of writ, R. 156
- summons for writ of *habeas corpus ad subjiciendum*, F. 46
- order for writ of *habeas corpus ad subjiciendum*, F. 47
- writ of *habeas corpus ad subjiciendum*, F. 48
- notice to be served with writ of *habeas corpus ad subjiciendum*, F. 49
- notice on having obtained writ of *habeas corpus ad subjiciendum* on an informal or illegal commitment, F. 50
- (B.) other writs of *habeas corpus*
 - where to be applied for, R. 157
 - for prisoner to give evidence, R. 158
 - counsel, in what order to be heard, R. 159
 - affidavit for writ of *habeas corpus ad testificandum*, or order to testify, F. 51
 - writ of *habeas corpus ad testificandum*, F. 52
 - order instead of *habeas corpus ad testificandum*, F. 53
 - Writ of *habeas corpus* to bring up a prisoner to be charged with attachment, F. 55
 - Writ of *habeas corpus* on return of *cepi corpus*, F. 56

INDICTMENTS AND INFORMATIONS,

- indictment found in Supreme Court, and apprehension of defendant, R. 38
- failure of prosecutor to proceed with indictment—discharge of defendant, R. 39
- defendant, if convicted, to be brought up for judgment within eight days, R. 40
- recognizance to prosecute information or *quo warranto*—exception for *ex officio* informations, R. 41
- information against justices of the peace, R. 42
- information, how and when to be applied for, R. 43
- costs of defendant if information or trial not proceeded with, or if defendant be acquitted, R. 44
- costs in some cases to follow judgment on indictment or information for libel in Supreme Court, R. 45
- entry of appearance to information, F. 9
- notice of motion to discharge prisoner out of custody when prosecutor has not proceeded within the time limited after defendant's apprehension, F. 10
- notice of motion for discharge of prisoner out of custody after conviction, when prosecutor has not proceeded to bring him up for sentence, F. 11.
- recognizance to prosecute information (criminal), F. 12
- recognizance to prosecute information *quo warranto*, F. 13
- notice to a justice of the peace of intention to apply for a criminal information, F. 14
- information (criminal), F. 15
- and see PLEADINGS

INFORMATION: see INDICTMENTS, PLEADINGS, and APPEARANCE TO INFORMATION, &c.

INTERPLEADER, R. 68

INTERPRETATION CLAUSE, R. 193

INTERROGATORIES: see ATTACHMENT FOR CONTEMPT

INQUISITION: see APPEARANCE TO INDICTMENTS AND PLEADINGS

JUDGMENT,

- when, may be pronounced at sittings or term at which trial took place, R. 117
- respite of, for new trial or in arrest of judgment, RR. 118, 123
- defendant under recognizance to receive, if about to abscond, R. 119

arrest of defendant to satisfy judgment, R. 120
 notice to defendant and his bail that judgment will be moved for, R. 121
 estreat of recognizances for want of appearance to receive final, R. 122
 proceedings relative to sentence, R. 124
 affidavits to be read before sentence, R. 125
 procedure where no affidavits are produced, R. 126
 warrant to apprehend defendant sentenced at trial when not present at the trial, F. 41
 order to commit when defendant sentenced at trial, F. 42
 judgment for the Crown on *quo warranto* after trial with a jury, F. 43
 judgment for the Crown on *mandamus* after trial with a jury, F. 44

JUDGMENT BY DEFAULT,
 default of pleadings, R. 116

JURISDICTION, convictions of courts of inferior, R. 164

JUSTICES OF THE PEACE: *see* CERTIORARI

MANDAMUS,

application for writ of, how to be made, R. 54
 notice to persons affected by proceedings, R. 55
 persons affected by proceedings may shew cause, R. 56
 order absolute need not be served, R. 57
 service of writ, where several respondents, R. 58
 service of writ on companies or public bodies, R. 59
 writ peremptory in first instance, when, R. 60
 date of writ, R. 61, and see F. 20
 return to writ, R. 62
 judgment where point of law is in answer to a return or pleading, R. 63
 rights of applicants obtaining judgment under R.R. 63 and 96, R. 64
 no process against persons obeying writ of *mandamus*, R. 65
 where respondent is merely ministerial the persons really interested may be permitted to frame return, R. 66
 return to writ by person really interested. Proceedings thereon, R. 67
 Order LVI of Rules of Court, to apply to an interpleader in any *mandamus*, R. 68
 issue of *mandamus*—affidavit of prosecutor, R. 69
 writ of *mandamus*, F. 20, and see R. 61
 return to writ of *mandamus*, F. 21
 and see PLEADINGS.

MANDAMUS—ORDERS IN THE NATURE OF,
 application for all such orders, how to be made, R. 70

MONEYS DUE UNDER A JUDGMENT, R. 136

MOTIONS,

Order LII of Rules of Court, apply to civil proceedings, R. 160
 notice of, how long, R. 161
 all applications to be by motion, R. 162
 copy of affidavits in applications, R. 163
 quashing convictions or orders of inferior jurisdictions, R. 164
 Court may direct notice of any motion to be to other persons, R. 165

NON-COMPLIANCE,

Order LXVIII of Rules of Court to apply to civil and criminal proceedings, R. 193

NOT GUILTY: *see* PLEADINGS

NOTICE OF MOTION, R. 161

NOTICE OF TRIAL,

- what it shall state, R. 104
- who may give it, R. 105
- length of notice, 106
- in Halifax to be deemed, for what day, R. 107
- elsewhere to be deemed, for what day, R. 108
- countermand of notice, R. 109

NOTICES,

- Order LXIV of Rules of Court to apply to civil proceedings, R. 192: and see SERVICE

OUSTER on disclaimer to *quo warranto*, F. 19: and see QUO WARRANTO

PAPER BOOKS,

- Rules of Order LVIII to apply to proceedings on the Crown Side, R. 102
- when to be delivered, R. 103

PLEADINGS,

(a.) *Pleadings on Indictment, Information, or Inquisition*

- title and form of pleadings, R. 89
- date of " " R. 90
- special plea or demurrer—signature of counsel, R. 91
- order and time to plead, R. 92
- extension of time to plead, R. 93

(b.) *Pleadings in Quo Warranto*

- plea to information and subsequent pleadings, R. 94
- reply to plea, R. 95

(c.) *Pleadings in Mandamus*

- plea to return and subsequent pleadings, R. 96

(d.) *Pleadings in Prohibition*

- pleadings and subsequent proceedings, R. 97
- and see SPECIAL CASE

PROCEEDINGS,

- copies of, R. 98
- date of, R. 4

PROHIBITION,

- application for, how to be made, R. 71
- order may be made absolute, *ex parte*, R. 72
- writ of prohibition, F. 22
- and see PLEADINGS

QUO WARRANTO,

- application for *quo warranto*, how made, R. 46
- notice of motion in above application, what it must contain, R. 47
- on filing information, affidavit required by relator, R. 48
- objections to title of defendant, how to be specified, R. 49
- refusal of motion—costs, R. 50
- substitution of another relator, R. 51
- consolidation of several orders *nisi*, in the same matter, R. 52
- disclaimer of intention to defend, R. 53
- information *quo warranto* against a member of a school board, F. 16
- notice of motion for an information *quo warranto*, F. 17

QUO WARRANTO—continued

disclaimer upon an information *quo warranto*, F. 18
 judgment of ouster on disclaimer to *quo warranto*, F. 19
 and see PLEADINGS

RECOGNIZANCES,

recognizances to be filed in office of Clerk of Crown, R. 83
 how forfeited or estreated, R. 84
 conditions in recognizances, R. 85
 default in performing conditions, R. 86
 see CERTIORARI

RECORDS, custody of, R. 3

RELATOR: see QUO WARRANTO

REPLICATION: see PLEADINGS

RETURN,

by Sheriff of fines collected, R. 198
 by Clerk of Crown of fines, &c., imposed, R. 199
 by Clerk of Crown of indictments found, R. 200

RULES OF COURT: see FORMS

RULES,

repeal of, R. 1
 come into operation 5th February, 1901, R.
 former orders or rules not revived, R. 2

SCANDALOUS MATTER IN AFFIDAVITS, R. 16

SCIRA FACIAS,

no proceedings, upon recognizance, R. 88

SENTENCE: see JUDGMENT

SERVICE,

affidavit of, R. 26
 sufficient service of writs and documents, what is, R. 99
 affidavit of service of notice of application for *certiorari*, F. 3
 affidavit of service of copy of information with notice indorsed
 on defendant in prison, F. 31
 affidavit of service of *subpœna* to answer an information, F. 32A

SHERIFF: see EXECUTION

SPECIAL CASES AND DEMURRERS,

civil proceedings—Order XXXIII of Rules of Court to apply,
 R. 100
 criminal proceedings—time for entering demurrers and special
 cases, R. 101
 and see PLEADINGS

SUBPŒNA, writ of, to answer an information, F. 32

SUPERSEDEAS, writ of, F. 45

TIME,

Order LX of Rules of Court to apply to civil proceedings, R. 293
 days, how to be reckoned, R. 184
 Sunday, Christmas and Good Friday, when not to be reckoned,
 R. 185
 expiration of, for doing any act expiring on a Sunday, or when
 offices closed, R. 186
 enlargement or abridgement of, by Court or judge, R. 187
 cause not proceeded with for a year, R. 188

TIME FOR RETURNS OF WRITS, R. 145

TRIAL, notice of, R. 104

— NEW,

application for, how to be made, R. 111

stay of proceedings upon application for, RR. 113, 114

time for applying for, extension of, R. 112

defendants not required to be present, on application for, R. 115

WARRANTS,

WARRANTO,

warrant to apprehend defendant sentenced at trial, F. 41

“ of arrest, F. 24

“ to admit to bail, F. 25

“ of committal, F. 26

WRIT OF HABEAS CORPUS: see HABEAS CORPUS

WRITS,

where to be issued, R. 141

preparation and indorsement of, R. 142

date of, R. 143

return of, R. 144

time within which writs are to be returned, R. 145

appearance to writs, R. 146

service of, R. 99

writ of attachment to answer information, F. 33

writ of attachment to answer information, *quo warranto*, F. 34

writ of *certiorari*, general, F. 1

writ of *certiorari* to remove convictions, &c., F. 7

writ of *capias* to answer to indictment or information, F. 37

writ of *distringas* to answer, F. 36

writ of *habeas corpus ad subjiciendum*, F. 48

writ of *habeas corpus ad testificandum*, F. 52

writ of *mandamus*, F. 20

writ of prohibition, F. 22

writ of restitution, F. 148

writ of subpoena to answer an information, F. 32

writ of *supersedeas* to *certiorari* and *procedendo* to carry back convictions, F. 45

writ of *venire facias* to answer, F. 35

YEAR, cause not proceeded with for one, R. 188

[The letter R. refers to the rules, and the letter F. to the forms. The number is the number of the rule or form, as the case may be, and is not the number of the page.]

APPENDIX B.

WINDING UP ACT.

RULES UNDER THE WINDING UP ACT.

In pursuance and execution of the powers given by the Revised Statutes of Canada, Chapter 129, Section 92, and of all other powers and authorities enabling us in that behalf, we order and direct in manner following :

1. Every petition for the winding up of a company under said chapter, may be intituled in the matter of the Winding Up Act, and of the company to which such petition relates, describing the company by its most usual style or firm.— [English General Orders, Nov. 1862, Rule 1.]

2. Every such petition shall be advertised at least ten clear days, before the hearing, once at least in two Halifax daily morning newspapers, and in cases in which the office, or principal, or last known, place of business, as the case may be, of such company, is or was situate outside of Halifax, then once at least in a local newspaper, if any, circulating in such district.— [Ib. Rule 2.]

3. Every notice of application by petition for winding up the business of a company under said chapter, may be served at the office, if any, of the company, and if no office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer or servant of the company there, or in case no such member, officer or servant can be found there, then by being left at such office or principal place of business, or by being served on such member or members of the company as the court may direct.— [Rule 3.]

4. Every petition for the winding up of any company by the court, shall be verified by an affidavit referring thereto, in the form or to the effect following :

IN THE SUPREME COURT,

In the matter of, &c.

I, of, &c., make oath and say that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my

own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true.

Sworn, &c.

Such affidavit shall be made by the petitioner, or by one of the petitioners if more than one, or in case the petition is presented by a company, by a director, secretary, or other principal officer thereof. It may be sworn before the said petition is presented, and such affidavit shall be sufficient *prima facie* evidence of the statements in the petition.—[See Rule 4, General Orders, 1862.]

5. Every contributory or creditor of the company shall be entitled to be furnished by the solicitor of the petitioner with a copy of the petition within twenty-four hours after requiring the same, on paying at the rate of ten cents per folio for such copy.—[Rule 5.]

6. Every order for the winding up of a company and the appointment of liquidators shall be advertised in such manner as the court shall direct.—[Rules 6 and 14.]

7. The form of security to be given by a liquidator on his appointment shall be a bond to the Queen, to be made by two or more sufficient sureties, or such other form as the court shall order.—[Rule 10.]

8. The liquidator shall, with all convenient speed after his appointment, make out and leave at the office of the Prothonotary, Halifax, a list of the contributories of the company, and such list shall be verified by the affidavit of the liquidator, or one of the liquidators if there are more than one, and such list shall, so far as is practicable, state the respective addresses of and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories, and such list may from time to time, by leave of the judge, be varied or added to by the official liquidator.—[See Rule 29.]

9. Upon the list of contributories being left at the office of the Prothonotary at Halifax, the liquidators shall obtain an appointment for the judges to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character and for what number of shares or interest such person is included in the list, and in case any variation or addition to such list shall at any time be made by the

liquidator, a similar notice shall be given to every person to whom such variation or addition applies. All such notices shall be given ten clear days before the day appointed to settle such list or such variation or addition.—[See Rule 30.]

10. The result of the settlement of the list of contributories shall be stated in a certificate by the Prothonotary, and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time or as to any particular person, or stating any variation of the list.—[See Rule 31.]

11. Every application to the judge to make any call on the contributories, or any of them, shall be made by summons stating the proposed amount of such call, and such summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call, or if the judge shall so direct, notice of such intended call may be given by advertisement.—[Rule 33.]

12. When any order for a call has been made a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the liquidator, specifying the amount or balance due from such contributory in respect of such call, but such order need not be advertised unless for any special reason the judge shall so direct.—[Rule 34.]

13. At the time of making an order for a call or calls, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, or for the payment of the first call thereby made, and afterwards from time to time so long as may be necessary, and at the time appointed by any such adjournment, or upon a summons or notice of motion to enforce payment of the said calls, or either or any of them, duly served; and upon proof of the service of the order and notice of the amount due and non-payment, an order or orders may be made for such of the contributories who have made default, or for such of them against whom it shall be thought proper to make such an order or orders, to pay forthwith the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively. Any order for the payment of money made under this rule may be enforced against all persons named therein, or bound thereby, in the same manner as a judg-

ment to the same effect could be enforced under the provisions of Order XL of the Rules of the Supreme Court. Any such order shall have the same force and effect as a judgment for the recovery or payment of money, and shall be entered as a judgment by the Prothonotary in the book mentioned in Order XXXIX, Rule 1, of the Rules of the Supreme Court. A separate order under this rule may be made against each or any individual contributory. It shall not be necessary to serve any such order before enforcing the same by execution. Any such order against a contributory who has been included for shares held in his own right, may be made in the form marked "A," in the schedule hereto, or to the like effect, and any such order against any contributory who has been included as executor or administrator of any deceased shareholder, may be made in the form marked "B," in the said schedule, or to the like effect. Such forms may be varied as circumstances may require.

14. Notices of meeting of creditors and contributories held under the said Act may be given by mailing the same to the creditors and contributories to their last known address within such period as to admit of their being delivered at least ten clear days before the meeting, and by advertisement in two Halifax daily morning newspapers at least ten clear days before the meeting.—[See Rule 45.]

15. No contributory or creditor shall be entitled to attend any proceedings in court or before the judge unless and until he has filed with the prothonotary an appearance in the matter, giving his name and address and the name and address of his solicitor, if any; and upon any change of his address, or his solicitor, his new address and the name and address of his new solicitor.—[Rule 62.]

16. Services upon contributories and creditors shall be effected, except when personal service is especially required, by sending the notice or a copy of the summons or order or other proceeding through the post in a prepaid letter, addressed to the solicitor of the party to be served (if any), or otherwise to the party himself to his last known address or place of abode; and such notice or copy, summons, order or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office.—[See Rule 63.]

17. No service under these rules shall be deemed invalid by reason that the Christian name or any of the Christian names of the person on whom service is sought to be made, has been omitted or designated by initial letters in the list of contributories, or in the summons, order, notice or other document wherein the name of such contributory or creditor is contained, provided the judge is satisfied that such service is in other respects sufficient.—[Rule 64.]

18. When the court or a judge by any judgment or order shall award costs, or direct the payment of costs, or make any direction or provision respecting the payment of costs, in every such case, the court or judge may, in and by the same judgment or order, fix and tax in a lump sum, the amount of such costs, and direct payment of such lump sum in lieu of taxed costs.

19. In these Rules the expression "court" shall include "judge."

Halifax, January 28, 1891.

(Sgd.) JAS. McDONALD,
H. McDONALD,
HENRY W. SMITH,
J. N. RITCHIE,
CHARLES J. TOWNSHEND.

"A."

Rule 13.

S. S.

In the matter of . . . , and in the matter of the Winding Up Act, Chapter 129, Revised Statutes of Canada.

Upon reading the order for calls herein, dated . . . , and the affidavits of . . . , and upon hearing . . . , and on motion, the proceedings upon the said order for calls having been duly adjourned to this day :

IN THE SUPREME COURT.

It is ordered that . . . , of . . . , in the County of . . . , one of the contributories of the said . . . , do forthwith pay to . . . , the liquidators of the said . . . , at . . . , the sum of . . . , being the amount due and payable by the said contributory upon and in respect of the call of . . . per cent., payable on the . . . , day of . . . , 19 . . . , made by the said order for calls, dated

....., and that the said liquidators have judgment and execution against the said...., for the sum of \$... , together with the costs of this application, which are hereby taxed and allowed, at the sum of \$... , making in all the sum of \$...., and that the said liquidators do recover the said sum of \$.... debt, and the said sum of \$...., costs against the said

Dated Halifax, the.....day of....., A.D. 19..

“B.”

Rule 13.

IN THE SUPREME COURT.

S. S.

In the matter of the....., and in the matter of the Winding Up Act, Chapter 129, Revised Statutes of Canada.

Upon reading the order for calls herein, dated., and the affidavits....., and upon hearing...., and, on motion, the proceedings upon the said order for calls having been duly adjourned to this day ;

It is ordered that, of....., in the County of, executor of the last will and testament of (or administrator of the goods, chattels and effects which were of)....., late of....., in the County of....., deceased, do forthwith pay to... .., the liquidators of the said ... , at... .., out of the goods, chattels, moneys and estate which were of the said, deceased, at the time of his death, and which have already come, or which may hereafter come, to the hands of the said..... as such executor (or administrator) as aforesaid, the sum of \$...., being the amount due and payable by the said, as a contributory of the said, upon and in respect of the call of.....per cent., payable on theday of....., 19.., made by the said order for calls, dated....., and that the said liquidators do recover against the said, the said sum of \$...., and also the sum of \$...., for the costs of this application (which are hereby fixed and taxed at that amount), which said debt and costs in the whole amount to \$... , to be levied upon the goods, chattels, moneys and estate which were of the said, deceased, at the time of his death, and which have already come, or which may hereafter come, to the hands of the said....., as executor (or administrator) as aforesaid to be administered.

Dated Halifax, the.....day of....., A.D. 19..

